

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1
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4 STATE OF WISCONSIN,
5 PLAINTIFF, JURY TRIAL - DAY 24
6 vs. CLOSING ARGUMENTS, CONTD.
7 Case No. 05 CF 381
8 STEVEN A. AVERY,
9 DEFENDANT.
10
11 DATE: MARCH 15, 2007
12
13 BEFORE: Hon. Patrick L. Willis
14 Circuit Court Judge
15
16 APPEARANCES: KENNETH R. KRATZ
17 Special Prosecutor
18 On behalf of the State of Wisconsin.
19
20 THOMAS J. FALLON
21 Special Prosecutor
22 On behalf of the State of Wisconsin.
23
24 NORMAN A. GAHN
25 Special Prosecutor
On behalf of the State of Wisconsin.
DEAN A. STRANG
Attorney at Law
On behalf of the Defendant.
JEROME F. BUTING
Attorney at Law
On behalf of the Defendant.
STEVEN A. AVERY
Defendant
Appeared in person.
TRANSCRIPT OF PROCEEDINGS
Reported by Diane Tesheneck, RPR
Official Court Reporter

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(Jury not present.)

THE COURT: At this time we're back on the record in the case of State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here for a continuation of closing arguments this morning. Will the parties present state their appearances for the record.

ATTORNEY KRATZ: Good morning, Judge. The State appears by Calumet County D.A. Ken Kratz, Assistant Attorney General Tom Fallon, Assistant D.A. Norm Gahn appearing as Special Prosecutors.

ATTORNEY STRANG: Good morning as well. Steven Avery is present, again. And Jerome Buting and Dean Strang standing for him.

THE COURT: All right. Before we bring in the jury and continue with closing arguments there was one matter I wanted to clarify for the record. During the course of these proceedings we have had some individual voir dire with the jurors. And I wanted to clarify the Court's understanding that neither party is asking that any of the jurors be excused for cause, based on any of the information adduced at the voir dire. Mr. Kratz.

ATTORNEY KRATZ: That's correct, Judge.

THE COURT: Mr. Strang.

1 ATTORNEY STRANG: That is also correct.

2 THE COURT: Very well. Is there anything
3 else the parties wish to take up outside the
4 presence of the jury before we resume with closings.

5 ATTORNEY KRATZ: No, Judge.

6 ATTORNEY STRANG: No, sir.

7 THE COURT: All right. We'll bring the
8 jurors in at this time.

9 (Jury present.)

10 THE COURT: You may be seated. Good
11 morning, again, members of the jury. At this time
12 we're ready to resume closing arguments. Mr. Strang
13 will be speaking first on behalf of the defendant.

14 ATTORNEY STRANG: Thank you. Good morning.

15 JURORS: Good morning.

16 ATTORNEY STRANG: You know, I -- what's it
17 been, five weeks, or six weeks, or whatever it's
18 been, and the rules within which we operate
19 fundamentally allow me only to speak at you. At
20 this point, I would be ready to speak with you. I
21 can't exactly. But I do want to do my best to talk
22 with you this morning. Can't hear?

23 JUROR: It's kind of soft.

24 ATTORNEY STRANG: Kind of soft.

25 THE COURT: Which number is that?

1 ATTORNEY STRANG: I'm No. 7. I'm getting
2 nods, you hear me, whether you want to or not.

3 I want -- I want you to step back just a
4 little bit here and let's try to work at
5 assembling a bit what you might do in approaching
6 your task. And you have got such a mass of
7 information, really, over the last five weeks,
8 let's call it. There are some things you are not
9 going to be able to do, I think. But there are
10 also some things you can do. And I want to talk
11 about what I see as the line between those
12 things.

13 You, unfortunately, are not going to be
14 able to solve the murder here. And I say that
15 for this reason, if Steven Avery did it, if -- if
16 he's the guy who murdered Teresa Halbach, then --
17 then, in a sense you are not going to solve that.
18 They already think that.

19 This is the person they think all the
20 evidence points to, the person they have
21 identified as doing it. You can agree or
22 disagree with that, with that -- that theory of
23 prosecution. But, fundamentally, you and I
24 aren't solving a murder, because if Steven Avery
25 didn't do it, we can't tell you who did.

1 You know, Jerry Buting, Jerome Buting,
2 in Court, you know, is not going to tell you --
3 doesn't mean to tell you that, for instance,
4 Bobby Dassey murdered Teresa Halbach. We don't
5 mean to tell you that someone else murdered
6 Teresa Halbach. It's really kind of a point, we
7 don't have a police department, you don't have a
8 police department.

9 We're not going to be able to solve the
10 murder, if Steven Avery did not do it. So, you
11 know, you can agree with the State, you can agree
12 with the defense, but at some level you are not
13 solving the murder, as much as it's natural for
14 all of us to want do that.

15 Second thing I think you are not going
16 to be able to do, I'm quite certain you are not
17 going to be able to do, is bring Teresa Halbach
18 back through that door, or better yet, back
19 through the door of her mom's house. We are not
20 going to be able to do that. Convicting a guilty
21 guy, convicting the person who killed her,
22 wouldn't do it. Convicting someone who didn't
23 kill her, certainly won't do it.

24 The life that was before October 31,
25 2005, never will be lost. It's etched in mom's

1 heart. It's etched in her brother's, and her
2 sister's minds, in their memories, in the people
3 they are. That life is not lost. The life that
4 could have been, going forward beginning
5 November 1, 2005 is forever lost, not forgotten,
6 but lost.

7 This is human tragedy, and if you or I
8 understood why people have been killing each
9 other since we crawled out of caves, we would
10 stop it. But somebody killed this woman and that
11 life going forward is lost. You can't get it
12 back. I can't get it back. The gentleman at
13 this table can't get it back.

14 The other thing I think that you are not
15 going to be able to do, you can't do, 13 people,
16 12 people, can't do, is we can't provide closure
17 here in any real meaningful way. It's not what
18 courtrooms are good for. You would like to be
19 able to do that for Teresa Halbach's family.

20 I think you would like to be able to do
21 that for Steven Avery's family, provide some
22 closure. Provide it for him, for crying out
23 loud. You would probably like to do that, too,
24 if you could. But there again, the time since
25 November of 2005 really, fundamentally, is lost,

1 as a matter of closure for Steven Avery.

2 He's never really, in the broader
3 public, been presumed innocent. He's never
4 really had the presumption to which he was
5 entitled as an American, as a citizen accused.
6 You folks may be the only people in the world,
7 other than those of us at my table, who do
8 presume him innocent.

9 You can't do anything about it. We
10 can't do anything about that, for the rest of the
11 world. And as I say, courtrooms are pitiful,
12 pathetic places to try and provide closure for
13 Delores, closure for the Halbach family. Not
14 that it's not important that the system not work,
15 it is important that the system work. Because
16 when it works, we can provide justice, or some
17 semblance of justice. But justice and closure
18 are -- are two different things.

19 Nobody is always happy with justice, or
20 at peace necessarily with justice. And in that
21 sense, closure would be something more.
22 Something more personal for that family, and for
23 this family, and for Steven. You'd provide it if
24 you could, I know you would. You won't be able
25 to do it.

1 And in some ways you are going to be
2 told that you ought not try to do any of these
3 things. Because I think Judge Willis will tell
4 you, after the lawyers are done speaking at long
5 last, I think he will tell you that you have got
6 to decide this case, as finders of fact, without
7 sympathy, without prejudice, without passion,
8 without all the things that might go into solving
9 murders or providing closure. You will be told
10 instead that you won't, you can't, be swayed by
11 sympathy, or prejudice, or passion.

12 But there are some very important things
13 that you can do here, now that I have identified
14 the things you can't. There are some very
15 important things you can do. You can honor your
16 oath. You can keep a promise that you made
17 before the world, more importantly, that you made
18 for yourself. You put your own conscience on the
19 line. You can honor the oath that you have taken
20 and that you will take, as jurors. You can obey
21 the oath.

22 That's no small thing. You are under an
23 enormous amount of pressure, internally and
24 externally. This table, my table, a courtroom
25 full of people, a community at large, terribly

1 serious issues for everybody. So when I say you
2 can honor and obey your oath, it's a big deal.

3 You also can apply the law, honestly and
4 courageously, part of what you are duty bound to
5 do, as the Judge delivers the law to you in the
6 form of those jury instructions. You can apply
7 that. You can decide this case, if you choose,
8 on the evidence in the courtroom and only the
9 evidence in the courtroom.

10 You have the power to do that. You have
11 a duty to do it, but more importantly you have
12 the power to do it. You get to make the choice
13 to do that. It's something you can do. You can
14 decide whether allegations have been proved,
15 beyond a reasonable doubt, in considering all of
16 the evidence.

17 I don't take it for granted that jurors
18 do that, in the end. Because jurors are all
19 human, just like I am. But if you choose to do
20 that, you can. It's within your grasp. And I
21 think, finally, you can, if you choose, you can
22 get it right.

23 In the limited parameters available to
24 you, you can get it right. You can go home,
25 whenever you are done, and say, I know in my

1 head, because I used my head, I know in my heart,
2 because I used my heart, I know in my conscience,
3 because I listened to my conscience, that I got
4 it right. You can do that. And if you do, you
5 will also have set it right.

6 Just as I said I was going to ask you,
7 when I spoke in opening statement, when it was
8 about 19 below zero outside, or whatever it was
9 that day, you will set a lot of things right, if
10 you get it right, here. The 1985 case won't
11 matter so much any more, if justice is done this
12 time.

13 Will that ever go away? No, but it just
14 won't matter so much any more, the injustice that
15 was done to Steven then, because there is --
16 there is something redemptive in human beings
17 going back and trying again and getting it right
18 eventually.

19 So I want to ask you simply to commit to
20 doing the things you can do, and to living with,
21 reconciling yourself to the things you can't do.
22 You are not going to solve a murder -- a murder,
23 but you may spare someone who's not a murderer.
24 You are not going to bring Teresa Halbach back to
25 her family, but at some level, just by this trial

1 ending, you can give her back to her family.

2 What I mean by that, I mean for crying
3 out loud, what an artificial thing we do -- and I
4 love this, I love being a lawyer, I love it --
5 but what an artificial strange thing it is that
6 we do here, rules of evidence, formal procedures.
7 And for crying out loud, right down to taking
8 body parts and putting exhibit numbers on them,
9 explain a person's phone records on a screen for
10 a room full of strangers to look at.

11 It is what we do. It's what we have to
12 do here, at some level. Clinical discussions of
13 death, dry discussions of who you are calling, or
14 who's calling you, on your cell phone, just for
15 example. It's important. It's necessary.

16 But, when this trial ends, with a just
17 verdict, although you can't bring her back, in
18 some ways you can give her back, you know. We
19 can be past that and remember the Teresa Halbach
20 who was, rather than the 15 loci of her DNA.

21 You won't give closure, but maybe,
22 maybe, you can create an opening; if not closure,
23 an opening when we finish this trial, for people
24 to get out of these pews, out of these
25 uncomfortable pews, go back about their lives,

1 and in church, and in community, and wherever --
2 wherever the heck people hang out, in family
3 rooms, there pursue closure.

4 And the sense of restoration or
5 reconciliation that we find, or seek, in places
6 other than courtrooms, with uncomfortable pews to
7 sit in. So maybe, as you finish this case,
8 although you can't give closure, maybe you can
9 give the opening for it.

10 How do you undertake then, to do the
11 things that you can do. It's witnesses, it was
12 helpful for Mr. Kratz to give you pictures of the
13 witnesses so you can associate the face with the
14 name again. But much more fundamentally, how do
15 you -- how do you assemble and assimilate this
16 mass of information and approach it in a
17 practical way.

18 You can't do it by hoping the DNA will
19 tell you a story. You know, unfortunately, for
20 example, DNA, doesn't tell stories. People tell
21 stories. People have stories. DNA is
22 submicroscopic bits of protein. Mine's a little
23 different than yours, but, you know,
24 fundamentally we're all about 99.9 percent the
25 same, probably. Doesn't tell a story. It

1 doesn't tell why someone did something, doesn't
2 tell when it got where it got.

3 If a human being made a mistake with the
4 DNA, it doesn't tell you anything at all about
5 whether -- whether it should have been here, or
6 wasn't here, or whatnot. It doesn't -- It
7 doesn't tell you a story, unfortunately, although
8 it makes good rhetoric, in a closing argument.

9 So what you have to do in the end is,
10 you have to look and listen to people here. Even
11 when they are talking about science, or filling
12 their -- with the propane truck, or whatever. In
13 this process, to do your job, to do the thing you
14 can, you have got to look at real intently on the
15 witness stand and listen to people. And you have
16 got to sort out who you believe and who you
17 don't, in the end.

18 So I want to at least suggest that you
19 ask two very basic questions here as -- as a
20 framework, a possible framework for getting at
21 the things you can do here, if you choose. First
22 question, you know, he says he is innocent.
23 Anybody can say they are innocent.

24 Back at the time before you were around,
25 before anybody was really looking at him, you

1 might ask first, was he doing the things that an
2 innocent person might do. As you look back at
3 it, was he acting and was he behaving like an
4 innocent man. That's one question you could ask,
5 sort of approaching this whole mass of evidence.

6 A second question you might ask yourself
7 is, for the law enforcement professionals and the
8 prosecutors, primarily the state employees and
9 state witnesses, call them law enforcement people
10 generally, the ones who are so convinced he is
11 guilty, back before they got here, were -- were
12 they behaving as honest people acting in good
13 faith do.

14 You could ask yourself that question,
15 again, as sort of a framework for approaching
16 this mass of evidence. Back before they knew you
17 were going to look at them, as you see it now,
18 were they behaving honestly, were they acting in
19 good faith. Now, these -- these are just two
20 suggestions, just some lawyer's idea. You can go
21 about this whatever way you want. But this might
22 be helpful.

23 And ask yourself, as to the folks who
24 think Steven Avery is guilty, do you believe them
25 in the end, and believe them to a level that you

1 would not even pause or hesitate, when called
2 upon to act in the most important affairs of
3 life. That's language right out of this
4 reasonable doubt instruction that you got.

5 And just taking a part of it, and it's
6 sitting under your chairs, or wherever your
7 instructions are, you don't have to pick it up
8 and look at it now, but you will find that. I
9 think it's a helpful practical guide in deciding
10 whether something is proven, whether you believe
11 it, beyond a reasonable doubt. It's, you know,
12 would you -- given the information you have in
13 the end, would you pause or hesitate in the most
14 important affairs of life.

15 There's no getting around that this is
16 one of the most important affairs of your life,
17 of your lives. A young woman is dead, for no
18 conceivable good reason. And a man is on trial
19 for doing it. Enormous consequences.

20 And Mrs. Halbach, and everybody who
21 loved and cared about this young woman, brothers,
22 sisters, friends, uncles, aunts, you name it.
23 And to Mrs. Avery, whose own story is tragic.
24 You know, and to the people who fought for his
25 innocence, the handful of people who believed

1 him, before the rest of the world finally got it
2 right, who went through all that, Mrs. Avery, and
3 then two years later to have this come crashing
4 down on her. This is an important affair. And
5 it is for you now, too.

6 So, I start with my first question, did
7 he behave as an innocent man might behave. Let's
8 go back, let's go back to roughly October, 2005.
9 What's he doing? What's Steven Avery doing?
10 Well, he is living in a trailer that he borrowed
11 from Rollie Johnson. That's pretty modest.
12 That's a damn sight better than a prison cell,
13 that he had been in. He's got himself a
14 girlfriend. He's working in the family business.
15 This is all honest stuff. So far.

16 He has a lawsuit started, for a whole
17 lot of money, based on he's got two indisputable
18 points on his side in that lawsuit. One, he was
19 innocent of the earlier case, but, you know, he
20 rotted in prison for a while anyway. So, you
21 know, he is innocent, but he went to prison.
22 He's got two pretty good starting points in a
23 lawsuit, in getting some money. And that's what
24 he's got two other lawyers pursuing for him, back
25 in 2005. He's got his mom and dad back. I don't

1 mean to be ignoring Allen, but when I speak of
2 Delores and anybody else, he's got his family
3 back, is the point.

4 And as this -- as this case starts to
5 take shape, you know, as Teresa gets reported
6 missing, and they find out that she had a photo
7 shoot out at the Avery property. The very night,
8 November 3, she's reported missing, Sergeant
9 Colborn comes out to the property, bumps into
10 Steven Avery.

11 Steven is not expecting the police.
12 There's no way he would have even known she had
13 been reported missing at this point. Bumps into
14 Sergeant Colborn and he is cooperative. By
15 Sergeant Colborn's own account, he is
16 cooperative, open, talks to Sergeant Colborn.
17 Doesn't say I'm not talking to you, you know.

18 The next morning, same thing. Detective
19 Remiker and Lieutenant Lenk come out to visit
20 him. He's cooperative, cooperative to the point
21 of saying you can come into my house, when they
22 ask, go ahead, come in my house.

23 I think it's later on Friday,
24 November 4, when David Beach comes and, you know,
25 has the poster. He wants to put the poster up.

1 This is Teresa's relative, nice younger guy who
2 testified, I think the first day of testimony.
3 And David Beach has a conversation with Steve
4 Avery and Steve is forthright. He's calm. He
5 appears concerned, according to Mr. Beach.

6 To me, this is useful, because at that
7 point he is not posing. He is not in a
8 courtroom. He doesn't know how this is all going
9 to play out. These -- These are people who are
10 seeing him real, if you will, just having, you
11 know, encounters with him. And this is their
12 take on what -- on what they are getting from his
13 behavior and what he says.

14 Is he behaving like an innocent man?
15 Well, he has Teresa Halbach's cell phone number.
16 We get a glimpse of her, she's obviously willing
17 to give this out. She says so in the voice mail
18 message. She leaves her cell phone number on the
19 voice mail message. They caught that, that she
20 leaves on the Janda voice -- or answering
21 machine.

22 And Steve has her cell phone number. He
23 has got it written down in two places in his
24 house. They are on his computer desk somewhere.
25 They are there on November 5 when the police

1 descend and the -- the Avery people get excluded
2 from the property. And the police have it for a
3 week. They are there. He hasn't destroyed her
4 cell phone number, hasn't tried to get rid of it,
5 you know. It is there in not one, but two
6 places.

7 So, you know, I don't know, if you can
8 burn a cell phone, and if you can burn an A310
9 Digital Power Shot Camera, I don't know why you
10 can't burn two pieces of paper that have a cell
11 phone number on it. That's not what he does,
12 obviously.

13 There was a van for sale. Heaven knows
14 there was a van, you saw about 10 pictures of
15 this silly maroon van sitting out there. Why --
16 Why do I, you know, why do I suggest that's
17 evidence, if you will, of Steve behaving like an
18 innocent guy would behave? Well, you know, if
19 you're -- if you are going to lure the
20 photographer to your property so you can have
21 your evil way with her, and kill her, you don't
22 need a car, you don't need anything for sale.
23 You just lie and say, you know, I want you to
24 come out and take a picture of a '73 Eldorado,
25 or, you know, whatever it is.

1 There's a van. It's the van he tells
2 Auto Trader. It's owned by Barb Janda, just like
3 he tells Auto Trader, B. Janda. And gives B.
4 Janda's telephone number. Turns out there is no
5 dispute, of which I'm aware. The Dassey boys,
6 you know, Scott Tadych, the people who know about
7 this, who testified, yeah, there's a van. It's
8 sitting there. She's trying to sell it. It's
9 hers.

10 I think that's suggestive of innocent
11 behavior. Not of, you know, luring, or
12 concocting some scheme so that you can murder
13 somebody.

14 Look, again, what he's doing in October
15 and early November, 2005, while he's still in his
16 house. The gun's over the bed. Are they hidden?
17 Has he -- you know, has he run off and burned
18 them, or asked his nephew to take them and thrown
19 them in the bottom of a pond or something, or
20 even moved them to the spare bedroom? No, the
21 guns are where they are. They are right where
22 Rollie Johnson left them.

23 Did he crush the car, no. Did he empty
24 the burn barrel, try to hide, you know, whatever
25 is in the burn barrel? Did he melt the license

1 plates? Did he get rid of the key that
2 supposedly is found, you know, next to the foot
3 of his bed, or across the way from the foot of
4 his bed, next to his desk? No, you know, he
5 doesn't do any of that. I don't think the key is
6 there. But if you believe that it's -- that it's
7 there, you know, if you believe it's there, then
8 it's awfully incriminating, if you believe he put
9 it there.

10 But, you know, I don't know why he would
11 keep the key, and that key alone, of all of
12 Teresa Halbach's possessions, if he has
13 previously disconnected the battery so that the
14 key won't work, unless he reconnect the battery
15 for some reason. And he's got a junkyard, for
16 crying out loud. Leave the key in the trunk
17 where the keys are for all the other junk
18 vehicles. Leave it in the ignition, put it in
19 the grass, I don't know. Bring that, and that
20 alone, to your bedroom.

21 But you know, in general, the behavior
22 you are seeing from Steven Avery on November 3
23 and November 4 is open, cooperative, sure you can
24 search my house, contrasted to the behavior of a
25 George Zipperer, who is one of the other

1 appointments Teresa has that afternoon.
2 Uncooperative, hostile, dishonest with the
3 police, won't let him in the house for a long
4 time, even after he knows this young woman is
5 missing. You get this from -- some of it from
6 JoEllen Zipperer and some of it from Detective
7 Remiker.

8 How about burning trash, plastic smell,
9 burning trash at about, give or take, 3:45 on
10 Monday afternoon, how about. Well, that really
11 sort of takes you to Bobby Dassey, and Blaine
12 Dassey, and Lisa Buchner, and John Leurquin, to
13 decide what burning trash means.

14 If Bobby Dassey is right and Teresa
15 Halbach has been there at 2:45, then burning
16 trash at 3:45 with a plastic smell is potentially
17 incriminating. Bob Fabian sees this, smells the
18 plastic burning as well. That's potentially
19 incriminating if Bobby is right.

20 I'm wondering why Bob Fabian doesn't
21 smell the quite distinctive odor of a burning
22 tire. You know, rubber burning, with black smoke
23 pouring thickly out of the burning barrel, if
24 supposedly the tire is being used to burn the
25 cell phone, the camera, and the palm pilot.

1 But setting that aside, to me there is a
2 more fundamental problem with that. I don't
3 think Bobby Dassey is right. You know, Blaine
4 Dassey has a good reason to know when he gets off
5 the bus every day, it's 3:30 to 3:40. He comes
6 home, Bobby is sleeping. Bobby is there and he's
7 sleeping. This is what his own brother
8 remembers.

9 More, the bus driver has a pretty good
10 reason to know what time. She's driving the same
11 route every afternoon, dropping off the same
12 kids, in the same place, at about the same time,
13 every afternoon.

14 She's no friend of Steven Avery. She's
15 not connected to Steven Avery. She's not
16 coached. She's not trying to oversell what she
17 remembers. But that's when she drops the Dassey
18 boys off. And one of the days that week, either
19 Halloween, or Tuesday, the 1st, or Wednesday,
20 November 2nd, she remembers seeing a female
21 photographer taking pictures of a van.

22 If facts are stubborn, as counsel says,
23 then that -- then that's a pretty stubborn fact.
24 Just because she's not overselling it, and she
25 has no reason to want -- to care how this case

1 comes out, you know.

2 So is it possible that some other female
3 photographer was there on Tuesday, November 2nd,
4 taking a picture of a van? Well, is it possible?
5 Sure, it's possible. But even Investigator
6 Wiegert concedes, when pushed a little bit about
7 that, that he doesn't have any information about
8 another female photographer coming to take a
9 picture of another van.

10 So this is pretty reliable stuff, that
11 Teresa is there at more like 3:30 or 3:40, not
12 2:45. John Leurquin sees a green SUV leaving.
13 What does he care about Steven Avery? For that
14 matter, what does he really care about Teresa
15 Halbach. And he doesn't have -- he doesn't have
16 a dog in this fight.

17 What he has to do is sit and stare out
18 the front windshield of his truck, every day for
19 half an hour, 3:30 to 4, quitting time, as he
20 fills the LP truck. He has got nothing to do
21 except look at the world. Filters out the school
22 bus, filters out, you know, the cars he sees
23 coming and going every day. That's common sense,
24 that makes sense.

25 When something new goes by, it's not a

1 heavily traveled road, he notices. Is he
2 overselling the point, no. Can't say it's that
3 SUV, can't say it's a Toyota RAV4. Looks
4 similar, can't say who is driving it. Didn't see
5 whether it turned right or left at the stop sign
6 on Highway 147. You know, he's not gilding the
7 lily, so to speak. He's not overselling what he
8 saw.

9 So, to me -- you guys are the ones that
10 matter -- but to me, that's fairly reliable
11 stuff. It's reported to the police, candidly,
12 when they ask. Lisa Buchner for that matter goes
13 up to the barricade, that Saturday, says I have
14 some information maybe you want. They interview
15 her two days later, you know, the following
16 Monday, when it's fresh in mind. And she tells
17 them what she knows. Tells them what she doesn't
18 know, for that matter.

19 So, you know, you got Bobby stacked up
20 against Blaine, Lisa Buchner and John Leurquin,
21 and it looks to me like the more probable time
22 frame is 3:30ish that she's there. And if that's
23 so, then burning garbage in your burn barrel at
24 3:45 is just burning garbage in your burn barrel.
25 It's innocent. Bob Fabian smells plastic, so

1 what. It's a white plastic garbage bag that, you
2 know, Blaine sees.

3 And you got plastic in your garbage, you
4 know, I'll bet you do, unless you live in town
5 where you've got a nice blue recycling tub or
6 something, and you separate that stuff out. But
7 this doesn't look like much, if the time frame is
8 different than Bobby Dassey has it.

9 So how about -- how about the 4:35 p.m.
10 phone call to Teresa's cell phone, what my
11 colleague referred to as the alibi phone call.
12 And the State argues he is doing that to create
13 an alibi, because he knows that will create a
14 record on the cell phone bills, cell phone
15 company records.

16 Okay. All right. I mean, first of all,
17 it makes the *67 calls not very important,
18 because they are going to create a record too.
19 And if he knows a 4:35 call is going to create a
20 record, then he also knows that the 2:24 and 2:33
21 call are going to create a record. But maybe
22 more importantly than that, this isn't much of a
23 alibi.

24 It's a cell phone, calling a cell phone,
25 you can be anywhere, doesn't place you in any

1 particular, you know, spot on the planet. It's
2 not like you are at home in your kitchen, because
3 you called on your land line, you know, with a 6
4 foot cord keeping you from going any further.
5 It's a cell phone. It's not a good alibi, you
6 know, it doesn't get you anywhere, or suggest
7 that it's guilty behavior.

8 This call, also, draws more attention to
9 you, not less. I mean, you are going to show up
10 on the cell phone records. It is your cell phone
11 you are using. It's not -- This isn't something
12 you do if you are trying to alibi yourself.

13 But if, while we're looking at phone
14 calls and moving through Steve's behavior on
15 October 31, you know, hey, there are two
16 telephone calls the State hasn't talked much
17 about yet, if at all, but they stipulate on this.
18 They agreed. There are two phone calls from the
19 Manitowoc County Jail to Steven Avery's land
20 line.

21 He's got a cordless phone, it may even
22 be in one of the pictures in the bedroom, so he
23 can wander around. But it is, you know, it is a
24 cordless land line phone, they have stipulated.
25 These phone calls come in from his girlfriend,

1 Jodi, from the jail. First one is at 5:36 in the
2 afternoon, 15 minutes of talking, tape recorded.
3 Investigator Wiegert has listened to it. And
4 then another one at 8:57 p.m., tape recorded,
5 then listened to by the police, 15 minutes long,
6 talking to his girlfriend.

7 This is what somebody who's in the
8 process of burning a body is going to be doing?
9 Are you kidding me? You know, I mean, you think
10 maybe you would have heard those tapes played if
11 there had been something incriminating, or out of
12 the ordinary about the 15 minute conversations
13 with the girlfriend, that night, Halloween night?
14 It's more just evidence of every day life, doing
15 what an innocent person might well be doing. And
16 that's how October 31 comes to an end.

17 Later that week -- and I, you know,
18 Blaine Dassey tells you this, he didn't make a
19 big point out of it, but he told you, and I want
20 to remind you about that, later that week Steve
21 Avery suggests to Blaine, maybe he wants to
22 invite some of his friends over for a bonfire, at
23 Steve's place. Blaine's in high school, high
24 school kids, bonfire, he makes the suggestion.
25 It never happens, for whatever -- I don't even

1 know that Blaine explained why, but it just --
2 the bonfire never happens later in the week.

3 But, you know, if you had burned a body
4 in your burn pit, or you even knew that there
5 were bones in your burn pit, spread around, human
6 remains, you are going to invite some high school
7 kids over to have a bonfire and sit around the
8 same burn area? I'm not. That doesn't seem to
9 me that somebody who's guilty, that that's
10 something he would do, an invitation he would
11 extend to his nephew. A bunch of random high
12 school kids, come on over to my make shift
13 crematorium for a bonfire and stand around.

14 What does he do here, in terms of
15 behaving like an innocent guy, or not. Well,
16 look at the witnesses we called on his behalf.
17 Now, all walks of life, many fewer witnesses than
18 the State called, but as I say, all walks of
19 life. And what struck me, at least, about the
20 folks who testified for you, because we called
21 them, is I thought to a person, these folks were
22 natural, they were real.

23 They weren't swiveling in their chair to
24 look at you and give you a talk, as if they were
25 an old friend of yours every time they are asked

1 a question. They are not advocating anything, as
2 far as I could pick up. Or as I say, sort of
3 selling you something, overselling something.
4 They are candid on cross-examination, just as
5 they were on direct examination. I thought, at
6 least, that's what this group of people shared.

7 Was I surprised that we had to call the
8 bus driver, rather than the State calling, to
9 help you with the time frame that afternoon,
10 yeah, I was surprised. But we did it, since they
11 didn't. And now you have got that information.

12 But, you know, these -- these people
13 rang true to my ear, at least. And it's your
14 ears that matter.

15 So let me move to my second question:
16 Can you believe the police? Can you believe the
17 law enforcement folks who are so sure that Steven
18 Avery's guilty? What do you see about their
19 behavior before they are on the stage here?
20 Well, look at what they say and do when they
21 don't know that you are going to be listening and
22 seeing.

23 Let's start with Andy Colborn, since I
24 sort of started with him on November 3. He calls
25 in, does a license check on Teresa Halbach's car.

1 He says he thinks it was probably on November 3,
2 not sure, but probably November 3, that he did
3 that. But remember he's working on November 3,
4 so he would have had his radio.

5 And it's Detective Remiker who says
6 ordinarily you would use your radio when you are
7 calling in a license check to dispatch. He uses
8 his cell phone instead. The tape you hear is
9 clearly a phone call, not a radio in. So I think
10 it's probably more likely that this license check
11 is November 4, when Sergeant Colborn acknowledges
12 he was off.

13 Didn't work on November 4. And you may
14 remember, Mr. Kratz asked him, do you remember
15 what you were doing on November 4, 2005. He
16 says, yes, I do. I was off. I remember what I
17 was doing. Doesn't tell you what he was doing,
18 other than to deny he went to the Avery Salvage
19 yard, or denied he had anything to do with
20 planting evidence. But he is off.

21 And I'm not going to play it for you
22 again, it's in evidence, but -- Let's see if this
23 comes up. That's -- That's what you hear on the
24 tape that we played.

25 SERGEANT COLBORN: Lynn.

1 DISPATCHER: Hi Andy.

2 SERGEANT COLBORN: Can you run Sam,
3 William, Henry, 582, see if it comes back to that
4 da da da da da -- then they start talking over
5 each other. I can't make it out. You can listen
6 to it if you want. Then she goes off on talking
7 about needing a Spanish interpreter, chitty
8 chatting while she's doing the license check.

9 She's comes back and she confirms it's
10 Teresa Halbach's license plate, the missing
11 person.

12 Sergeant Colborn says, '99 Toyota, and
13 so on.

14 Why is he doing that? Why is he doing
15 that? Why is he calling in a license check on
16 November 3, or November 4, which ever day it is?
17 You can get that information from Investigator
18 Wiegert, or if you want to call your dispatcher,
19 ask your dispatcher.

20 This sounds a lot like what road patrol
21 officers do when they come across a stalled car,
22 an abandoned car, a car where it shouldn't be.
23 That's what this sounds like. Draw your own
24 conclusions, obviously look at it like from any
25 other piece of evidence. But what's important is

1 he is doing this, not on a witness stand, he is
2 doing this when he doesn't know anybody is going
3 to be seeing, or hearing, or evaluating it later.

4 Stay -- Move off Sergeant Colborn, but
5 stay in the Manitowoc County Sheriff's Department
6 for the moment. Mr. Kratz argued to you
7 yesterday that Special Agent Fassbender, starting
8 November 5, devoted his resources where this
9 thing was likely going. Where this thing was
10 likely going.

11 True, I guess he did, in the sense that
12 it was certainly clear pretty quickly where this
13 thing, this investigation, was going. In my
14 opening, and with Detective Remiker, we had a
15 chance to hear, at 11:30 in the morning, on
16 November 5, half an hour after the first police
17 officers arrived at the Avery property, there to,
18 you know, see the concealed Toyota that the
19 Sturm's had found. Half an hour later, for you
20 to hear, at a time when he, you know, he wouldn't
21 have known it, Manitowoc detective, Dennis
22 Jacobs, talking to his dispatcher:

23 Can you tell me, do we have a body or
24 anything yet?

25 DISPATCHER: I don't believe so.

1 Very next thing he says:

2 Do we have Steven Avery in custody,
3 though?

4 Yeah, it's pretty clear where this is
5 going. By the time Special Agent Fassbender
6 arrives, you know, at 2:25, 3 hours later that
7 afternoon almost, it's pretty clear where it's
8 going. And five minutes after this one
9 conversation --

10 THE COURT: Mr. Strang, I'm getting a
11 signal for a break, so we're going to take a short
12 break and then we'll resume in 10 minutes.

13 (Jury not present.)

14 THE COURT: You may be seated. Let's
15 report back at 10:15.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: Mr. Strang, you may resume.

19 ATTORNEY STRANG: Thank you.

20 So five minutes later, five minutes
21 after Detective Jacobs called with the
22 dispatcher, he is on the phone with Detective
23 Remiker, or the radio, I don't remember now, but
24 you got the tape in evidence. Of course,
25 Detective Remiker does testify, and you may

1 remember him, kind of presented himself as
2 someone who thought they were barking up the
3 wrong tree, that Steve didn't do this, when he
4 testifies. That morning, just about an hour
5 after the Sturms have first found the Toyota.
6 Okay. Other than the car, do we have
7 anything else?
8 Not yet.
9 Okay. Is he in custody?
10 ATTORNEY STRANG: It's not who are you
11 talking about, who do you mean by he.
12 Negative, nothing yet.
13 One pronoun, he, and these guys know who
14 they are talking about at 11:35 in the morning.
15 Are these folks acting in a way that seems good
16 faith and honest to you, back then? Six days
17 after this, Special Agent Fassbender makes the
18 telephone call to Sherry Culhane at the Crime
19 Lab, try to give her some direction. And, you
20 know, she's holding herself out as a scientist,
21 that's how she holds herself out.
22 Is Special Agent Fassbender asking for
23 science, on the exhibit that Mr. Buting showed
24 you? Is he asking for science there, for a good
25 cautious, objective, let's see where the science

1 leads us kind of thing, when he's asking, try to
2 put her -- put her in his house or garage.
3 That's not a very good fit, in my view, with the
4 State's, counsel's argument here, when they
5 submit evidence, they are not looking for a
6 specific answer. Oh, really.

7 The memo belies that. The phone memo
8 does. And Sherry Culhane, on the stand, herself,
9 tells you, that by the time these buccal swabs
10 are taken in November, 2005, from all kinds of
11 people other than Steven Avery, members of his
12 family, these are elimination samples.

13 Elimination samples. We have already decided
14 they didn't do it, we're just trying to eliminate
15 if we find their DA -- their DNA anywhere.

16 Sherry Culhane, for that matter, had she
17 followed the protocol on her testing, the bottom
18 line folks, had she followed her protocol on the
19 testing of that bullet found in March. She can't
20 say it's Teresa Halbach's DNA. First time in her
21 career, 23 years, first time, on the last chance
22 to put Teresa Halbach in his house or garage, she
23 deviates from the protocol and includes Teresa
24 Halbach.

25 Now, it was just the control that was

1 contaminated. It was just Sherry Culhane's DNA.
2 That doesn't turn the evidentiary sample into
3 having Teresa Halbach's DNA. Okay. All right.
4 Fine. But the protocol presumably is there for a
5 reason. Protocols are the foundation of good
6 science. And the protocol says, if you have got
7 contamination, you set that experiment aside and
8 you do it again, you don't rely on that one.

9 Science ought to be reliable. It ought
10 to be consistent. And it ought to be cautious,
11 otherwise, it's not science. And the results
12 simply aren't reliable. That's why you have a
13 control. And when you get contamination, you now
14 know that something has gone wrong with this.

15 And to say that the contamination is
16 over here, but not over here, is a little like
17 saying, I don't know, maybe no one even eats TV
18 dinners any more, maybe they're microwave dinners
19 now, I guess, from what I see in the grocery
20 store. But whatever, however you heat this stuff
21 up, when you pull off the plastic, or the tin, or
22 whatever covers the meal, you know, and the
23 little peach cobbler has a fly in it, in that
24 little compartment, you don't eat the Salisbury
25 steak either, okay. You know, this is -- this is

1 not fancy stuff in the end. It's -- It is and
2 should be common sense, at some level, in the
3 end. But she deviates, for the first time in 23
4 years.

5 The end -- This continues, the end of
6 January, 2007, bringing us up to six weeks ago.
7 Now, the State goes all the way to Virginia, to
8 Quantico, to get the FBI. Are they trying -- Is
9 the FBI trying to root out possible police
10 corruption? Are they concerned about the
11 integrity, of policing in northeastern Wisconsin?
12 Trying to find out if there's a bad cop or not?
13 I think the decision is already made.

14 You have this, too, Special Agent Gerald
15 Mullen of the FBI, memo to the FBI laboratory,
16 this January 30th --

17 ATTORNEY KRATZ: Judge, I'm sorry, I don't
18 mean to interrupt. I believe the defense is
19 entitled to one closing. Mr. Buting covered exactly
20 the same territory yesterday. I understood they
21 were going to split and talk about different items.
22 I simply wanted to interpose an objection. My
23 apologies to counsel, but that was my understanding
24 from the Court.

25 ATTORNEY STRANG: I would be more concerned

1 about boring you. Mr. Buting did cover it. It's
2 there.

3 But I want to say something about EDTA
4 that Mr. Buting did not. Janine Arvizu, who is
5 not a doctor, Mr. Buting misspoke, she didn't
6 complete her dissertation. She did the other
7 Ph.D. work. I want to make sure you got out of
8 that what she had to tell you. And it's this,
9 the FBI protocol that they put together in a
10 couple of weeks here, is good for identifying and
11 confirming the presence of EDTA. It is not
12 designed for confirming the absence of EDTA. It
13 has to do with the detection limits. The
14 instrument has a detection limit and the method
15 has a detection limit.

16 So, look, if you were interested in
17 finding out whether your friend is at home, and
18 the instrument you chose was a telephone, call
19 him at his house, ring his telephone number, if
20 he answers the phone, you have confirmed his
21 presence with your instrument. He is there, you
22 have called his home, not his cell phone, he is
23 there. He's got to be, if he's answering his
24 phone. You have confirmed his presence.

25 However, if your instrument is your

1 telephone and you call his home and it just rings
2 and rings, and it's not answered, you have not
3 confirmed his absence. He could be in the
4 shower. He could be in the basement folding the
5 laundry, he could be in bed sleeping. He could
6 be pouting and just not answering the phone
7 because he sees it's you calling on the caller ID
8 and he doesn't want to talk to you today.
9 Whatever it is, you haven't confirmed his absence
10 with the telephone. You haven't designed a
11 protocol to get you to that.

12 Your method, in other words, of
13 detection, isn't suited to confirming absence,
14 only presence. If you like fresh baked hot apple
15 pie, and I put you in a room and I blindfold you
16 and we walk in, a fresh baked hot apple pie, your
17 nose is the instrument. It has a detection
18 limit.

19 A dog has a better instrument, lower
20 detection limit, fancier instrument. He can
21 detect less of the smell of apple pie than you
22 can, but you have got this instrument to use. If
23 it's within your detection limits, and the pie
24 is, you know, slid on the table under you while
25 you are blindfolded, you will detect it with your

1 instrument.

2 However, if the method is no good,
3 because we have got to consider that, you are not
4 smelling an apple pie. Well, is the room too
5 big, are the windows open, is the pie too far
6 away, does the room smell badly of something else
7 that's interfering with your instrument detecting
8 the fresh baked apple pie? We have method
9 detection problems and limits. Or is the apple
10 pie, not fresh baked, but it's an 11 year old
11 apple pie? You may not detect that either, with
12 your instrument. I don't think Janine Arvizu was
13 really telling you more than that. And,
14 unfortunately, Dr. LeBeau was trying to tell you
15 more than that and overselling his case.

16 Now, others who matter, in the law
17 enforcement group who think Steve is guilty.
18 Mr. Lenk and Mr. Colborn. They denied here, of
19 course, but what are they doing, in 2002, when
20 the evidence slip has to be signed for
21 transmission of the hair sample and fingernail
22 clippings, or whatever it is, to the Crime Lab,
23 and the evidence custodian at the time, Detective
24 Sergeant James Lenk, signs off.

25 Is he really, as he claims here, simply

1 signing the form, giving it to Sergeant Shallue
2 and allowing Sergeant Shallue to fill out the
3 otherwise blank form? You are entitled to
4 disbelieve that. Or at least to say he's not an
5 honest evidence custodian if he is doing that at
6 the time. He is begging to be fired, because he
7 is not documenting what's going where. Or if
8 he's just telling you here, to distance himself
9 from that file in the Clerk's Office, you are
10 entitled to consider that too.

11 Would Lieutenant Lenk lie, in the end?
12 Would he lie, as a sworn law enforcement officer?
13 Well, all I can tell you is, he did, twice, and
14 you heard it. I have the transcript from the
15 earlier hearing. Here he says he arrives at
16 2:00. When he's asked under oath before, it's
17 6:30 or 7, once when he's asked, and the other
18 time he's asked, it's late afternoon. This isn't
19 15 minutes off, folks. It's under oath and it's
20 a difference of four and a half or five hours.

21 At that time of year, November, 2005,
22 it's the difference between broad daylight and
23 pitch black. He was under oath, and he gave two
24 very different answers to the same question, at
25 two different times, under oath. He was the only

1 witness, in five weeks, shown to have made
2 inconsistent statements, under oath.

3 Others made inconsistent statements and
4 were shown to have. Blaine Dassey comes to mind.
5 Scott Tadych comes to mind. Both of them are
6 asked, at first, by the police, was there a
7 bonfire, on Halloween, no, no bonfire. Later
8 they get asked again, now there is a bonfire. In
9 fact, Scott Tadych comes here and says big
10 bonfire, flames to the top of the roof. Same
11 guy, again, I showed, when first asked by the
12 police, no bonfire. Closer in time to October
13 31, no, didn't see a bonfire that night.

14 That's inconsistent statements, but they
15 are not under oath. They still, as the Judge
16 instructed you yesterday, are something you can
17 consider, consistency or inconsistency of a
18 witness' statements, over time. Still you can
19 consider those when you decide who you believe,
20 and not under oath.

21 Blaine explained that a little bit.
22 Explained his changes of his story. Well, the
23 police kept asking him. They didn't like the
24 answer, they asked him again. Got angry with him
25 and his mother, at the restaurant, when they

1 wouldn't reject Uncle Steve. Is that because
2 Blaine is scared of Uncle Steve?

3 My recollection, yours will govern,
4 there's 12 of you and one of me, but my
5 recollection of that testimony is that the
6 question was whether Blaine Dassey was scared,
7 and the answer was something like, no, not
8 really, but he used to boss us around. You will
9 decide that.

10 But in any event, Lieutenant Lenk, by
11 the time he gets to you folks, is telling you
12 some really implausible things. Like, I had
13 never been to Steven Avery's house. I have never
14 been on the Avery property, but somehow, just out
15 of habit, I turned right at the end of Avery
16 Road, and I -- I -- I just happened to drive
17 straight to Steven Avery's trailer. Okay.

18 So this -- You know, what they are doing
19 and whether -- whether you think you can trust
20 them back when they are not aware they are going
21 to be observed or revealed later, is important in
22 the same way what he does, back before he knows
23 it's going to be played out to you, is important
24 in assessing who you believe. Are they acting
25 honestly? Is he acting like an innocent person

1 would act, or might act?

2 It is important because it comes down to
3 the bias in the end. You know, would, in the
4 end, police officers plant evidence? And that's
5 a hard one, you know. That's why it's helpful to
6 say, boy, are they behaving honestly and in good
7 faith up to then. Because in the end, would they
8 plant evidence against someone. Now, you will
9 have to decide whether you have a reasonable
10 doubt about that, or whether, you know, we have
11 shown that to you at any level, or not.

12 But, look, it is a matter of bias, if it
13 happened. And what you critically, I think, need
14 to understand, that if and when police officers
15 plant evidence, they are not doing it to frame an
16 innocent man. They are doing it because they
17 believe the man guilty. They are not doing it to
18 frame an innocent man. They are doing it to
19 ensure the conviction of someone they have
20 decided is guilty.

21 That's why you plant evidence. Other
22 than in the strangest, you know, most abandoned
23 of conscience sort of police officer, they aren't
24 after framing an innocent person, they are after
25 ensuring the conviction of someone they just

1 believe is guilty.

2 So as you approach the whole concept of
3 planting you have got to understand the bias that
4 would drive it, not, you know, boy, they are out
5 to get an innocent guy. It's just the opposite.
6 It's just the opposite. But it's also just as
7 corrosive to do it. Because juries decide guilt,
8 not police officers who are involved in the hunt.
9 You know, they get invested too, in the outcome,
10 and in whom they suspect, who they think is good
11 for something.

12 And, you know, the State pooh-poohs the
13 idea that a civil lawsuit, for a whole lot of
14 money, against the Manitowoc Sheriff's
15 Department, would have caused anyone to so
16 dislike Steven Avery that they would plant
17 evidence against him. Well, look what the mere
18 suggestion that they did plant evidence has done,
19 in terms of a reaction here.

20 The defensiveness of the case that the
21 State presented to you, the anger about the mere
22 suggestion of planting evidence, the
23 self-righteousness, the hostility, the trying to
24 have it both ways with you. We trusted the
25 Manitowoc people, they were skilled. They were

1 honest. They were the best available evidence
2 technicians.

3 But we also had somebody watching. We
4 were short of manpower. We needed them. But, in
5 the first search of Steven Avery's -- first
6 lengthy search of Steven Avery's house, on the
7 evening of November 5, we got enough people that
8 two of them can be taking photos. Two of them
9 can be taking photos, in this little trailer, as
10 you heard. You hear the State trying to have it
11 both ways, here.

12 And in sort of getting at the bias that
13 would drive a police officer, potentially, to
14 plant evidence, it's this -- it's this need, this
15 belief that he is not really innocent. He's
16 guilty, he's got to be guilty. It's what you
17 hear from Detective Jacobs and Detective Remiker,
18 it's that quality. It's the sense that this is
19 where this is going, three hours in, when all we
20 have got is the car, on a big property with a
21 whole lot of other people there.

22 It's the -- After five weeks of evidence
23 and 501 exhibits, it's the State standing up and
24 telling you it's clear. What in the world is
25 clear and simple when it takes five weeks and 501

1 exhibits to try to show. And whatever this is,
2 whatever, whichever way you come out, this case
3 isn't clear and simple.

4 And that's where the civil lawsuit feeds
5 in. It's not that it feeds in with bad cops. It
6 feeds in with good cops, in the sense that it
7 erodes, fundamentally, the sense of identity, we
8 get the bad guys, we don't get the good guys.

9 And here it is, they got it wrong, that
10 department got it wrong. Not only do they get it
11 wrong, but the right guy is still out there and
12 he commits another rape, Gregory Allen. This
13 goes to my identity, if I wear that same uniform.
14 Even if I'm aligned with these people, as you
15 hear the sort of reaction from the prosecutors to
16 this.

17 And now, you know, since -- since he
18 really couldn't have been that innocent, he's got
19 to be guilty of this one. He must be the right
20 guy this time. So you -- you know, nobody means
21 to do this, but you start looking around things
22 that are inconvenient, that don't quite square up
23 with the theory that he did it.

24 One example, and one example only, from
25 the blood, Teresa Halbach's blood in her own car.

1 If it were true, as the State now says, that
2 Steven Avery shot Teresa Halbach in his own
3 garage, killed her there, and if it were true
4 that he then burned her in the area immediately
5 behind the garage, why, why is her bloody head
6 ever in the Toyota at all. It's farther to take
7 her back to her car than it is to take her around
8 the corner of your garage, to the burn site, if
9 that's what it is.

10 So the State sort of ignore's the fact
11 that if Steve Avery had done it, and done it in
12 the way they say, her blood wouldn't be in the
13 car. The bloody hair stain wouldn't be there.
14 It is there, of course, so it suggests that
15 somebody did have to use the car as a transport.
16 She wasn't burned there -- or wasn't killed
17 there, but that's inconvenient. You guys have to
18 be, in the end, if you're going to do what you
19 can do here, more objective than that.

20 You can't overlook the inconvenient,
21 because it doesn't fit. You can't overlook, for
22 example, in deciding whether Lieutenant Lenk
23 dropped the key on the floor, rather than finding
24 it honestly.

25 You can't overlook the fact that all her

1 other keys are gone, the three or four other keys
2 that Tom Pearce described, and which common sense
3 would tell you would be on your key ring, and
4 they are not there. It's the kind of thing
5 that's inconvenient, but you can't overlook it,
6 even if they do.

7 The overlooking of the inconvenient,
8 really, I think, reaches its peak, if you will,
9 here in the State's opening statement, where
10 knowing that human bone fragments are found, at
11 least in the burn barrel, a long way from the
12 burn area behind Steve's garage. And maybe, in
13 the quarry, to the south.

14 Knowing, in other words, that their own
15 experts will say, yeah, bones were moved here,
16 the State never tells you in its opening
17 statement, there's a second place, and maybe even
18 a third, where human bone fragments, burnt human
19 bone fragments, are found. And we have no
20 evidence that it's more than one person. You
21 don't get told that, it's inconvenient.

22 But it also is true. And that's why, in
23 the end, it does become so important to decide,
24 burned here and a few moved elsewhere, or burned
25 somewhere else and most of them dumped here,

1 behind Avery's garage. That's why that says so
2 much about his guilt or innocence, in the end.

3 Look, I have got to sit down. Which no
4 defense lawyer ever likes to do because, in the
5 closing argument, because the prosecution gets to
6 stand back up. In a sense, they get the last
7 word, in closing argument.

8 I'm not going to get to answer the
9 passion, or the anger, or the replies that will
10 come, when I sit down. I got to turn him over to
11 you and let them have the last word. And as hard
12 as that is on me, the greater burden is on you.
13 The greater burden is on you. Because you have
14 got to try to do the things you can do here, and
15 you have got to find a way to live with the
16 things you can't do, but would like to do here.

17 You have got the great burden of
18 reaching a just, fair, and conscientious
19 decision. And so, in a sense, I'm -- in a sense
20 I'm going to rely on Judge Willis to give my
21 rebuttal to their rebuttal, in a sense. Because
22 I think he will tell you, when all is said and
23 done, that you won't be swayed by sympathy,
24 prejudice, or passion.

25 And I think that will be an answer to

1 what's about to come. I think he will, Judge
2 Willis will, I think, in the end, tell you,
3 charge you, to be very careful and deliberate --
4 deliberate in weighing the evidence, and to keep
5 your duty steadfastly. And that will be
6 sufficient answer, for me, to what's about to
7 come.

8 So I ask you, please, give it your full
9 and fair consideration. Do that critically here,
10 as citizens of Manitowoc County, where we stayed
11 to pick a jury, where we stayed to pick the 12 of
12 you, the 13 of you. And get it right. Get it
13 right.

14 Steven Avery has not been proved guilty
15 of murdering or mutilating the corpse of Teresa
16 Halbach. He's not been proved guilty of that,
17 beyond a reasonable doubt. It's because he is
18 not guilty. And that's what I'm asking you to
19 say in getting it right.

20 THE COURT: Members of the jury, there
21 is -- as counsel indicated, there's one more
22 argument, the State gets a chance for rebuttal. I'm
23 going to take a 10 minute break at this time, then
24 we'll come back to hear the State's argument and I
25 will give you final instructions.

1 Again, as I reminded you yesterday,
2 because the arguments are not complete yet, do
3 not begin your deliberations until all the
4 arguments have been made and I give you final
5 instructions.

6 (Jury not present.)

7 THE COURT: You may be seated. Counsel, I
8 will see you back at 11.

9 (Recess taken.)

10 (Jury present.)

11 THE COURT: And, Mr. Kratz, you may begin.

12 ATTORNEY KRATZ: Thank you, Judge.

13 This part of the case is the shortest
14 part, that is, the shortest argument, thankfully,
15 but it's also the most difficult, because I have
16 to limit my comments to what the defense has
17 argued. And it's also the part that it's a
18 little bit out of my comfort zone.

19 As you may have noticed throughout this
20 trial, I have tried to be courteous. I have
21 tried to examine witnesses with the fairness, and
22 the dignity, and the respect for which they
23 deserve in the courtroom. I have tried never to
24 cut off a juror (sic). When a juror (sic) wanted
25 to explain an answer, I tried never to say, stop,

1 I don't want to hear it, or the jury doesn't want
2 to hear what the answer might be. And so this
3 argument is different than that. It's
4 necessarily not as civil. It's necessarily not
5 my style, so I want to say that upfront.

6 Highly charged statements have been
7 given by the defense in their closing arguments.
8 And it's my responsibility to meet those,
9 hopefully, with compelling argument, the things
10 that you will find important when dismissing or
11 discarding some of what the defense has tried to
12 have you believe here.

13 I may personally like Mr. Strang, and I
14 may personally like Mr. Buting, but their
15 arguments I most certainly do not like. I think
16 they are unfair. I think they are unfair to you.
17 I think in many instances they have been what's
18 called disingenuous, which means that I don't
19 think that they have been totally truthful. And
20 in all candor towards you, I think they have
21 tried to fool you on a number of occasions.

22 I have got a job to do. I have got a
23 job to do as the lead prosecutor in this case, to
24 make sure that you are not fooled, to make sure
25 that you aren't sold something that isn't true.

1 And that's what this argument is all about.

2 The very first argument that Mr. Strang
3 made in the beginning of his opening statement,
4 he made it again in the beginning of his closing
5 statement, and at the end of his closing
6 statement, referenced the 1985 wrongful
7 conviction of that man, Steven Avery.

8 Steven Avery was wrongfully convicted in
9 1985. We all understand that. We all believe
10 that. But don't one of you consider anything
11 about that case when deciding the facts of Teresa
12 Halbach. Teresa Halbach, the Halbach family, and
13 the interests of justice deserve that you decide
14 it on this case, not on whether or not Mr. Avery
15 deserves some sympathy, or whether or not
16 Mr. Avery deserves to set it right. That's
17 something for civil lawsuits. That's something
18 for other jurisdictions to deal with and to
19 handle.

20 It is absolutely improper for Mr. Strang
21 to ask you to, in any way, consider that 1985
22 lawsuit, when finally coming to a decision in
23 this case, and in Mr. Strang's statement, in his
24 opening statement, to send him home. Sending
25 Mr. Avery home, if that is going to happen, is

1 going to be because the State, the prosecution
2 team, all of the agencies that you heard about,
3 didn't meet its burden, we didn't meet our burden
4 of proof on this case, not because Mr. Avery was
5 convicted in 1985.

6 Let me also suggest to you that any case
7 this big, especially what we have called the
8 largest criminal investigation. I don't know if
9 it is the largest in state history, but it is
10 certainly the largest that anybody that you have
11 heard of has ever talked about. Any case that
12 big, with that many witnesses, and you have just
13 gotten a sliver of the number of witnesses, and a
14 sliver of the number of exhibits that are
15 available in this case.

16 Five or six weeks may seem like a long
17 trial. Let me assure you, it could have been a
18 lot, lot longer, if we would have done the kinds
19 of things that Mr. Strang asked us to do. As an
20 example, if we would have followed every what's
21 called "blind alley", if we would have put in
22 what's called "negative evidence"; that is,
23 eliminate everybody who's not even a suspect in
24 this case, which is what law enforcement did.
25 That's their job. That's law enforcement's job.

1 And then, once we get to the prosecution
2 stage, it is our job to present evidence on who
3 we believe committed the crime. Does everybody
4 understand that? So, if we put in the entire
5 case, if you will, that would certainly be
6 something more than what would be relevant for
7 State of Wisconsin vs. Steven Avery. That's what
8 this case is about, not the '85 case.

9 The very first issue that I want to talk
10 about is perhaps the most problematic for the
11 jurors. I want to address this upfront, because
12 I believe that there were misrepresentations made
13 in the defense closing. I believe they tried to
14 fool you in their closing when they indicate that
15 Mr. Lenk comes in and all of a sudden there's a
16 key there.

17 Well, that's part of the story, and
18 that, of course, is a true statement. But what
19 the defense neglected, in their closing, to tell
20 you, was everything that Sergeant Colborn told
21 you about this particular investigation. I put
22 these two photos up because I'm calling them the
23 before and the after shot. And I put them next
24 to each other for a very, very important reason,
25 because they say a picture states a thousand

1 words.

2 This should do that for you, the before
3 and the after picture. These are taken just a
4 couple of minutes apart from each other, but
5 importantly, they are taken before the search,
6 before what Mr. Colborn talked about, not so
7 gently, or never so gently manipulating the
8 cabinet, and then after that had already been
9 accomplished.

10 A couple of important things to note.
11 First of all, we talked, I think in my closing or
12 in my opening perhaps even, about the slippers,
13 about how you, through your common sense, can
14 reconcile those slippers, that piece of evidence,
15 not just where they are situated with the wall
16 socket there, but you can understand how both
17 this cabinet was pushed to the left, pushing the
18 left slipper over to the left, and pushing the
19 right slipper over and actually flipping the left
20 slipper over. All right.

21 And then after jostling, and after
22 pushing, and after removing all the books, and
23 after Sergeant Colborn talked about putting those
24 books back in, and I want to get a correct
25 verbiage, "handled them none too gently", a key

1 comes out the back end of this particular
2 cabinet. Now, what hasn't been pointed out to
3 you yet, many of you being observant, may have
4 already noticed the before and the after.

5 This is the book that they were talking
6 about, that particular binder that was slammed
7 back into the cabinet. The before picture has
8 the binder virtually adjacent, or next to the
9 cabinet itself. The after picture has it several
10 inches back in. Why is that important? Why does
11 that one fact corroborate or lend credence to
12 Sergeant Colborn?

13 Sergeant Colborn said he slammed that
14 book back, none too gently. You have to kind of
15 envision this cabinet cocked, and the back of the
16 cabinet opened, the book slamming back, and the
17 key falling through that particular cabinet. And
18 so the testimony in connection with all of the
19 physical evidence, and not just what Mr. Strang
20 or Buting might tell you some of the evidence is,
21 where Lieutenant Lenk comes in and says, oh,
22 there's a key, which did happen, but the
23 explanation is absolutely plausible.

24 But more than that, we're going to need
25 to delve into this key and into this planting

1 issue, whether or not the key was planted. Was
2 the key planted. All right. To get to that
3 supposition, or to get to that conclusion, which
4 really is a supposition, because you are going to
5 have to guess, you have to know some things about
6 Sergeant Lenk -- excuse me -- Lieutenant Lenk,
7 and Sergeant Colborn. You have to know if they
8 are good, honest, decent cops, or if they are
9 not.

10 Now, we asked some questions, and you
11 can weigh their credibility. And they both
12 appeared indignant about this. They both
13 appeared upset about even being accused of such a
14 thing. And that demeanor, that credibility, is
15 something that you can and you should take into
16 consideration, in fact, when each of them said
17 absolutely not, absolutely not would I ever plant
18 evidence in this case.

19 But as importantly than that is the lack
20 of evidence. Mr. Strang was allowed, quite
21 properly, to talk about the lack of evidence that
22 the State would have presented. Wouldn't you
23 have expected evidence, is I think the way
24 Mr. Strang had placed it. Well, that works both
25 ways. And subpoena power and power to bring in

1 physical evidence applies equally to the State as
2 it does to the defense.

3 We know that because the defense has
4 subpoenaed some witnesses. They have brought
5 some witnesses in here. They have subpoenaed
6 some documents, and you have seen those
7 subpoenaed documents in this case.

8 Well, don't you think, folks, that if
9 either Sergeant Colborn or Lieutenant Lenk had a
10 pimple, had a blemish on their record for
11 truthfulness, or for honesty, or for planting
12 evidence, or for doing anything that was opposed
13 to the oath that they took to uphold the law in
14 Manitowoc County, don't you think you would have
15 heard about that. Don't you think that those two
16 good lawyers, excellent, in fact, defense
17 attorneys, would have presented that to you.

18 So when Mr. Strang tells you to look at
19 the big picture, and when he talks about, let's
20 see how they acted beforehand, beforehand you
21 didn't hear any evidence at all about Mr. Lenk or
22 Mr. Colborn. That is significant. But as
23 significant is the facts and circumstances
24 surrounding this particular bedroom.

25 And when Mr. Kucharski, Deputy

1 Kucharski, talked about sitting on this bed, and
2 actually facing towards the door, his feet, I
3 think the testimony was, were facing where the
4 key ends up when Lieutenant Lenk exits the room
5 and comes back. Don't you have to kind of ask
6 yourself the question, how did the key get there?

7 If it was planted, how did that key get
8 there? Did Lieutenant Lenk, as he's walking
9 here, throw it? Did he kind of lob it over
10 Mr. Kucharski. Well, that's ridiculous.
11 Absolutely ridiculous. And although all three of
12 these officers, and in fact the prosecution team,
13 would have preferred, obviously, that the key
14 wouldn't have been found in this way, it was.
15 All right.

16 Cases come to you how they are. And
17 again, under the microscope of a case of this
18 magnitude, there is going to be some human
19 factors. And there's going to be some things
20 that you are going to have to wrestle with. And
21 this is one of those things. I'm not going to
22 short change you on that particular case.

23 And you may take a long time in deciding
24 whether or not that key is significant, or
25 whether the key is not significant. But let me

1 ask you, just kind of for the sake of talking, as
2 Mr. Strang wanted to talk with you rather than at
3 you, I certainly have a style that I would prefer
4 that as well. Let's assume they never found the
5 key. Let's assume this key isn't part of this
6 case at all.

7 Let's assume Mr. Strang's theory is
8 correct, that these cops aren't trying to plant
9 an innocent person, but trying to make sure that
10 a guilty person is found guilty. Well, can't you
11 then, with that argument, set the key aside? Do
12 you have the ability, as a jury, to set that key
13 aside, if in fact it doesn't matter whether or
14 not Mr. Avery is guilty or not guilty in this
15 analysis? Can you set that aside and decide is
16 there enough other evidence, or is the key the
17 only thing that points to Mr. Avery?

18 Well, if this was a CSI case, one of
19 those cases on TV where sometimes that key, or
20 sometimes one little piece of evidence like that
21 may decide the guilt or innocence, it would make
22 a difference. But that key, in the big picture,
23 in the big scheme of things here, means very
24 little. All right.

25 Now, I'm telling you that not because I

1 don't want you to consider it, not because I
2 think that it's not important, or not because the
3 credibility of these officers is in question to
4 the State at all. What I am suggesting, though,
5 is that if you buy Mr. Strang's argument, if you
6 buy Mr. Strang's argument that they were trying
7 to make sure that a guilty person was found
8 guilty, then assigning accountability to the
9 murder for Teresa Halbach, shouldn't matter
10 whether or not that key was planted.

11 In other words, it shouldn't matter to
12 the Halbach family. You shouldn't be punishing
13 the police officers, in other words, the other
14 officers that were involved in this
15 investigation, if you come to that conclusion.
16 You are not going to. You are not going to come
17 to that conclusion because you have heard nothing
18 about these police officers that they would do
19 such a thing. But my suggestion is simply not to
20 focus all your attention.

21 In the law, that's called searching for
22 doubt. The Judge has told you, and may even tell
23 you again in your closing instruction, that you
24 are to search for the truth, you are not to
25 search for doubt. In other words, you don't go

1 into this case saying, well, let's look at where
2 all the discrepancies are first. That's the
3 place maybe that we should start, because as my
4 closing argument suggested to you, there's got to
5 be a reason, right. There's got to be a reason
6 that we have been here for five weeks.

7 No, there doesn't. There doesn't have
8 to be a reason why you have been here for five
9 weeks, other than the defendant's constitutional
10 right to a trial. And so the Judge will tell you
11 not to start there. The Judge will tell you not
12 to start at searching for doubt.

13 The Judge will tell you that the whole
14 process, the beginning of the process, the
15 middle, and the end, is to search for the truth.
16 To search for the truth in this case is who
17 killed Teresa Halbach, not whether or not we can
18 find some discrepancies.

19 More about the key. Mr. Buting, I
20 believe it was, had the imagination, let's call
21 it, to suggest to you that maybe officers were
22 taking a toothbrush and were kind of rubbing Mr.
23 Avery's toothbrush on the key and that's how the
24 DNA got on the key. Common sense should tell you
25 that these kind of motions, what are called

1 furtive motions, or for lay people, for people
2 like you, it's called suspicious looking things,
3 is something that you should probably discard.
4 Because if they take Mr. Avery's toothbrush and
5 start rubbing it on the key, you know, and then
6 kind of hold it behind their back, that becomes
7 almost cartoonish, that becomes something that is
8 not at all plausible.

9 But as important, when did that happen,
10 when did they plant the DNA on Mr. Avery's key.
11 Because we're not just talking about planting a
12 key. If it was planting a key, that's damning
13 enough. It's damning enough to have this
14 particular key found in Mr. Avery's bedroom. But
15 what makes it irrefutable is that Mr. Avery's
16 DNA, positive, hundred percent match, is on that
17 key. Right?

18 And you heard the testimony from Ms
19 Culhane, and perhaps others, that the last person
20 to handle a key or an object is most likely to
21 leave the DNA on the key. Now, Mr. Strang and
22 Mr. Buting have asked you to just discard that,
23 ignore it, ignore that expert opinion. I don't
24 know why they are asking you to do that, because
25 it doesn't fit with their theory of defense. But

1 it's the DNA on the key that has to be planted
2 too. Please understand that. It's not just
3 planting the key, it's planting the DNI -- the
4 DNA on the key as well.

5 If they planted the key, where did they
6 get the key? Now, that leads to an interesting
7 series of questions as well. There are only two
8 ways that law enforcement can get this key. All
9 right. Because the vehicle was locked, and
10 because on the 5th of November officers don't
11 really have access, as you have seen by the scene
12 security. They had to have access to the key
13 before the 5th.

14 And so there's only two ways to do that.
15 One, they can kind of stumble across it in a
16 scenario that Mr. Strang suggests, maybe off duty
17 or something like that. Or the last person to
18 hold that key, other than Teresa Halbach, is the
19 person who killed her.

20 Now, you heard that testimony in this
21 case. It may have drawn an objection, I don't
22 remember right now, use your own collective
23 knowledge as to whether it did. But that makes
24 sense, that the last person, other than Teresa,
25 to hold this key, is the person who killed her.

1 And if that's the case, then you hold these two
2 gentlemen responsible for suggesting that to you.

3 In other words, despite Mr. Buting
4 standing up here, I think it was the beginning of
5 yesterday, saying, look, folks, we're not saying
6 that the cops killed Teresa Halbach, what we're
7 saying is that somebody else, I think his words
8 were, "skillfully exploited law enforcement
9 bias", as if there's somebody smart enough out
10 there that could do that. We're going to talk
11 about that in just a minute.

12 But when you go down one layer, when you
13 scrape one layer of this manure off of the
14 topsoil, which is what it is, you scrape one
15 layer, you will realize that the cops had to kill
16 her. The cops had to be involved in killing
17 Teresa Halbach.

18 Now, are you prepared to say that? Are
19 you, as the jury, in order to find Mr. Avery not
20 guilty, willing to say that your cops, that your
21 Manitowoc County Sheriff's deputies, Lieutenant
22 Lenk, Sergeant Colborn, because of Mr. Avery's
23 lawsuit, that Sergeant Colborn and Lieutenant
24 Lenk didn't have a dime of stake in, at least
25 financially, that they weren't involved in in

1 1985, that they gave a deposition in about
2 receiving a phone call and transferring the phone
3 call, and that's the extent to it, but because of
4 that involvement, are you willing to say that
5 these two otherwise honest cops came across a 25
6 year old photographer, killed her, mutilated her,
7 burned her bones, all to set up and to frame
8 Mr. Avery. You have got to be willing to say
9 that. You have got to make that leap. Because
10 of this question right there, where did they get
11 the key.

12 The key isn't alone. The key is
13 attached, at least at some point, to something
14 called a lanyard, something that's around the
15 neck, similar to what you all are wearing as
16 juror badges. We know that that comes from Katie
17 Halbach. We know that that is found inside of
18 Teresa's SUV. And so where one is the other one
19 is. All right.

20 So I hope that makes sense. I hope you
21 understand that, at least for the first time in
22 my rebuttal, I'm going to be suggesting that you
23 dig down that one further step and understand
24 exactly what these two gentlemen are suggesting
25 to you. Despite Mr. Buting trying to sell you on

1 the fact that we're not saying the cops did it,
2 that's exactly what they are saying. That's
3 exactly what they are arguing to you, and you
4 have to be prepared to go there.

5 The next time that Mr. Buting tried to
6 fool you was when he told you that the police
7 never checked out other suspects in this case.
8 Well, you heard from Mr. Wiegert, you heard from
9 Mr. Fassbender, more particularly, that other
10 suspects were checked out. But let's think about
11 other suspects. Who were the other suspects in
12 this case? Where was the evidence pointing so
13 strongly, other than to Mr. Avery? Where was it?
14 Where was the evidence pointing?

15 Well, one choice was, Mr. Schmitz was
16 one of the people that saw Ms Halbach. Mr.
17 Schmitz, as you heard, was interviewed, was
18 checked out, but guess what, folks, Teresa
19 Halbach left that photo shoot alive. That kind
20 of eliminates Mr. Schmitz, doesn't it, from being
21 a suspect in this case.

22 Number two, was JoEllen Zipperer. And
23 although a nice little old lady like that
24 probably could have killed and mutilated Teresa
25 Halbach, guess what, folks, Teresa Halbach left

1 Mrs. Zipperer alive at about 2:27 p.m.

2 The third suspect then, or the third
3 logical person, was Mr. Avery, that's the third
4 customer that Teresa sees that day. That's the
5 only person that Teresa Halbach doesn't leave
6 alive, or at least isn't seen alive, after
7 meeting with Mr. Avery. So Schmitz and Zipperer
8 can be and were, early on, I will admit that,
9 were early on, eliminated as suspects in the
10 case.

11 As the case develops though, you heard
12 from Mr. Fassbender, that all the clues started
13 pointing towards one person. All right. So when
14 we talk about roommates and we talk about old
15 boyfriends, what you would think about as typical
16 suspects that may in fact be investigated,
17 doesn't make a whole lot of sense in devoting a
18 lot of resources in investigating those people
19 when the car is found in a different location.
20 When blood is found in that car, that turns out
21 to be that of Mr. Avery.

22 But I guess most importantly, when the
23 bones of the victim are found 20 feet or so
24 behind the property belonging to Mr. Avery, you
25 stop looking. You stop looking for people like

1 boyfriends, or other customers, or this kind of a
2 search. And you narrow it to who had access to
3 Teresa Halbach at that particular time. So it's
4 disingenuous, it's what I'm calling fooling you,
5 to suggest that other suspects in this case were
6 not ever checked out.

7 Mr. Strang talked about this phone call.
8 Now, this is going to take a really, really good
9 memory. And I hope one of you, and the 12 of you
10 collectively, we call it collective memory, which
11 means that when you deliberate in this case you
12 can talk about those kinds of -- those kinds of
13 things. When Mr. Strang first played this, or
14 attempted to play this particular tape, for
15 Mr. Colborn, I wonder if anybody remembers the
16 very next thing that happened.

17 I raised my hand and I said, objection,
18 your Honor. I said, I want some authentication.
19 Before Mr. Strang can play this tape, I objected
20 and said, I want to know the date and the time of
21 the tape. Because it's unfair to play this tape
22 for the jury without telling them the date and
23 the time that it's played. All right.

24 So it's foreseeing this very argument
25 that Mr. Strang made about a half an hour ago, or

1 an hour ago; that is, the tape could have been
2 the 3rd, but I think it was the 4th. Okay.
3 That's what Mr. Strang said to you, that
4 Mr. Colborn, the answer by Mr. Colborn was it was
5 on the third, but I think it was the 4th.

6 What the heck do I care, Mr. Strang,
7 what you think. What do I care if you think that
8 it was the 4th, or that it fits into your theory
9 of defense. This case is about evidence. It's
10 not about what Mr. Strang thinks. The answer
11 given on the witness stand was, it was the 3rd,
12 while on duty.

13 And the explanation about why it was a
14 phone call rather than a radio transmission, or a
15 dispatch kind of call, is because Mr. Wiegert had
16 called Mr. Colborn, if you remember, on the
17 phone. All right. He called him on the phone
18 and said can you check this out.

19 So in turn, Mr. Colborn called dispatch
20 and said I want to verify this particular plate.
21 Nothing sinister about that. Nothing unusual
22 about that. This isn't a traffic stop. It's not
23 a stop where you would radio it in, where your
24 time and your date become important and you want
25 to log in that kind of thing. It's not a traffic

1 stop at all. It's simply verifying Mr. Wiegert's
2 information, verifying the year, the license
3 plate, the make and model of the vehicle, nothing
4 sinister.

5 Now, I'm going to ask you to reject what
6 Mr. Strang said because that's not evidence. In
7 fact, what I'm saying to you right now is not
8 evidence. Evidence comes from the witness stand.
9 All right.

10 The answer to that question was the 3rd
11 of November. That is important. It's important
12 whether it was the 3rd, or whether it was the
13 4th. Now, when Mr. Strang answered my objection
14 by saying, well, we'll let the witness tell the
15 jury when it is. And the Judge allowed that, and
16 the witness did tell the jury when that was, that
17 it was the 3rd.

18 Mr. Strang still today, still today,
19 fools you, and stands before you and says, don't
20 believe Mr. Colborn, I think it was the 4th. All
21 right. That's the difference between evidence
22 and speculation. That's the difference between
23 the State's case and what the defense is trying
24 to sell you in their arguments.

25 Bones were moved in this case. There's

1 no question of that. Who moved the bones, to the
2 State, or for the theory of the prosecution is
3 easy. Mr. Avery moved the bones. He moved the
4 big bones. He moved the big bones, the ones he
5 could identify as human bones, from his burn pit,
6 over to his sister's burn barrel. All right.
7 That's a couple hundred feet away.

8 If you think about the selfishness
9 involved in that particular act, that I think
10 is -- is one factor. But I guess more
11 importantly is directing attention away from
12 himself. Might be that first night, might be the
13 31st, might be the 1st or the 2nd, because he has
14 got a couple of days, as it turns out, before the
15 police officers actually start the investigation.

16 But let's also remember this,
17 collectively, I want the 12 of you to remember
18 this when you deliberate. I want at least one of
19 you to say this when you are back in the jury
20 room. Although now we know that the cops didn't
21 get the search warrant, and they didn't come on
22 the property until the 5th of November, okay. We
23 know that now. Steven Avery didn't know that.

24 Steven Avery didn't know that Teresa
25 Halbach wasn't going to be reported missing until

1 the third, or that the flyover search wasn't
2 going to find the car, or that Ms Sturm even was
3 going to find the car on the 5th. For all Steven
4 Avery knows, the cops are on their way. Right
5 away. On their way, right away, the afternoon,
6 the late afternoon or early evening of the 31st.

7 Why is that important? Because as it
8 goes through some of this evidence and your
9 collective memories, and as you deliberate this
10 case, please remember that. Because there are
11 things that Mr. Avery does that the defense is
12 saying, well, why would he do all of those kind
13 of things.

14 Mr. Avery did all of those things on the
15 31st because he didn't know that the cops weren't
16 going to be knocking on his door, that very
17 night. They didn't know that -- Mr. Avery didn't
18 know that Teresa wasn't meeting a friend for
19 dinner, or that she wasn't going to be missed, or
20 that she didn't have another appointment, after
21 she was killed by Mr. Avery.

22 And so that's why he starts burning
23 things right away. That's why at 3:45 the
24 electronics are already being burned. That's
25 why, as we will be arguing and showing you,

1 Mr. Avery disposes of the body at the earliest
2 possible moment, that he moves the SUV at the
3 earliest possible moment, that he removes the
4 license plates.

5 He does all of those things, again, with
6 the benefit, as you saw in the photograph that
7 Mr. Remiker put in, of a police scanner, that's
8 inside and on top of the bar in Mr. Avery's. The
9 police scanner, so that Mr. Avery can hear, are
10 the cops on their way. Which, again, should
11 bolster, or should tell you why Sergeant Colborn
12 uses the telephone rather than using the radio,
13 it's because of things just like that, things
14 like officer's safety. But, again, I'm advancing
15 a little bit, and I want to make sure that I get
16 to those points.

17 The bones were moved, but they were
18 moved by Mr. Avery. These bones in the quarry,
19 I'm going to take about 20 seconds to talk about,
20 because the best anybody can say is that they are
21 possible human. What does possible human mean?
22 Well, it means we don't know what it is. All
23 right.

24 The best anthropologists in the world
25 don't know what these bones are. Dr. Eisenberg

1 didn't know what they were. Dr. Fairgrieve
2 didn't know what they were, he agreed with that.

3 And you heard a stipulation being read
4 to you by a person by the name of Les McCurdy.
5 Stipulation just means an agreement between the
6 parties, that these bones, we felt it important
7 enough, were sent out to the FBI. And Les
8 McCurdy from the FBI determined that these bones
9 were so degraded, that they were in such a shape
10 that even through testing, what's called
11 mitochondrial DNA testing, whether they are human
12 or not, could not, even by the FBI, be
13 determined.

14 So the bones in the quarry are really
15 not evidence in this case. And so Mr. Strang has
16 made a big deal out of showing you maps, and a
17 little flag, and things like that about a
18 possible bones. Again, speculation, conjecture,
19 is not part of this case. Facts are going to be
20 what decides this case.

21 ATTORNEY STRANG: Your Honor, I'm going to
22 interpose an objection. Like the 1985 case, there
23 is evidence here concerning the bones from the
24 quarry, possible human bones. It is proper for any
25 lawyer to argue all of the evidence, or any of the

1 evidence, in the case, including the 1985 case, or
2 the quarry bones, and I would like the jury so
3 instructed.

4 THE COURT: What I will instruct the jurors
5 is, remind you again, what you are hearing at this
6 time are arguments, not evidence. Your job, when
7 you are deliberating, is to remember the evidence as
8 it's been submitted, and draw your own conclusions
9 from that evidence. Mr. Kratz, you may proceed.

10 ATTORNEY KRATZ: Thank you, Judge.

11 The primary burn site, that is, where
12 the bones started burning, are important in a
13 sense and they are not important in a sense. All
14 right. It seems obvious what the answer is, but
15 if, again, you drag that first layer off of the
16 defense argument, it isn't going to make any
17 difference. But, of course, the primary burn
18 location is in Mr. Avery's pit. This is the
19 primary burn location.

20 And why do we say that? Dr. Fairgrieve,
21 I'm going to start from the other side,
22 Dr. Fairgrieve, the defense expert in this case,
23 said that he's had a case where bones were moved
24 from one location to the other, and that in that
25 case the bones moved to -- to the location had

1 more bones than were actually there. But what
2 Dr. Fairgrieve didn't do, and what he doesn't
3 know, are all the things that Dr. Eisenberg did,
4 and all the things that Dr. Eisenberg knows.

5 Dr. Eisenberg, of course, looked at the
6 bones. I guess that's the most important factor.
7 But this is one of those things that's common
8 sense. This is one of those things that
9 shouldn't take you a long time collectively.
10 Shouldn't take the 12 of you very long to decide
11 where the primary burn location is. It is the
12 pit. It's not most likely the burn pit, it is
13 this location.

14 How do we know that? Well, Teresa was
15 invited, or lured, whatever term you want to use,
16 on to that property. Her vehicle is there.
17 That's the last place that she is seen alive, is
18 just several feet from this location. Her burned
19 affects are on that particular property, just a
20 few feet away. Importantly though, her bone, her
21 tissue, especially her skull fragments, all of
22 them, all of them, are in this location.

23 Her clothes are there, at least what's
24 left of her clothes, are mixed in with those
25 bones, the rivets for her jeans are there. And

1 common sense, her bones and her jeans are in the
2 same place, because she's burned their. She's
3 burned in that location.

4 She was called there by Mr. Avery. And
5 the number one, if we're doing -- I'm going to
6 switch them around. The number one reason why
7 this is the primary burn location is that on
8 October 31st, Mr. Avery had a big whopping fire
9 there, on the 31st of October. And we haven't
10 heard any evidence of a big whopping fire, the
11 kind that would consume, fully consume a human
12 body, anywhere else on that property. That's the
13 primary burn location, ladies and gentlemen. You
14 can find that, and you should find that, beyond a
15 reasonable doubt. That shouldn't be a question
16 for you.

17 Mr. Buting said that there were no
18 fingerprints found on the SUV. I will just,
19 again, in 20 seconds, tell you that the
20 testimony, that perhaps Mr. Buting is ignoring,
21 from Mr. Riddle, or at least didn't tell you
22 about, from Mr. Riddle, the fingerprint guy, was
23 that of the eight latent prints that were lifted
24 in the case, none of them were suitable for
25 identification. All right.

1 So what Mr. Riddle also told you is
2 that, if you took your hand right now and placed
3 it onto an object, it's very likely that you
4 wouldn't leave fingerprints. That's why DNA
5 evidence is so much more powerful than
6 fingerprint evidence, at least nowadays, because
7 of those dynamics that are involved. Because of
8 the amount of sweat in your hands, and the oils,
9 and all of those kind of things, all are called
10 into question. I just mention that because I am
11 obligated to because Mr. Buting had mentioned
12 that.

13 They also, they meaning the defense,
14 talked about Teresa's body in the SUV. Once
15 again, expert testimony was that a 5 foot 6 inch
16 person could, in fact, fit in this particular
17 compartment of the RAV 4. And I guess you need
18 look no further than this area, the stamp, as I
19 talked about, the hair impression 25 year old
20 Teresa has left in that location. You can almost
21 see Teresa being pushed in, or shoved in, or
22 stuck in that location, which brings me, or will
23 bring me, to a point in just a moment.

24 Mr. Strang -- excuse me -- Mr. Buting,
25 actually asked you whether or not it would be

1 reasonable for police, by use of flashlights, to
2 see the stain that was by the ignition. When I
3 heard that I just about dropped my pen. All
4 right. There's the location, and that's the
5 stain that Mr. Buting is saying, why didn't the
6 cops see this.

7 Somebody want to tell me where a
8 flashlight has to be shined -- shown, from the
9 outside, to see that stain. You can see that
10 through the front window? You can see that
11 through one of the side windows? Are you going
12 to see that through the very back? Where are you
13 going to shine a flashlight that you are going to
14 be able to see that particular stain. All right.
15 That's disingenuous. It's the kind of argument
16 that you should be discarding, that you should be
17 saying it doesn't make any sense at all.

18 Mr. Buting also asked, well, if this
19 piece of evidence is -- excuse me -- if the
20 cabinet, the bookcase, is so important, why
21 didn't the State bring it into the courtroom. I
22 mentioned before, I think it's obvious, the State
23 doesn't have exclusive control over any evidence
24 in this particular case, at least as is presented
25 in court. The defense has just as much right to

1 bring that up here as the State did. All right.

2 We have taken photos, and I'm not going
3 to apologize for that. I'm not going to
4 apologize for what Mr. Buting calls my slick
5 PowerPoints. My God, a second grader can do a
6 PowerPoint examination. And the fact that
7 Mr. Buting wants to fumble around, he can do
8 that. I'm not going to do that to the jury.

9 But what we did do, is we took
10 photographs of all of the evidence to make it
11 easier to present, so that you could see all the
12 evidence. We brought in boxes of items like the
13 Palm Zire palm pilot box. We have the item
14 itself, but we also have a picture of it. We
15 have a picture of everything, as you have seen.
16 And so we're using pictures instead of the thing
17 itself.

18 And you can see, and at least
19 understand, with big clumsy kinds of items, the
20 reasons that we're doing that, for ease for the
21 jury. So that you can see big things, and you
22 can see small things, so we can zoom into areas,
23 and sometimes we don't need to do that.

24 Defense also suggested that there was no
25 blood on the CD case. Are you kidding me?

1 Mr. Buting may have showed you a picture, and I
2 didn't know where he got his picture from, but
3 the blood is obvious on the CD case. By the way,
4 I believe you are going to be getting the
5 photographs back into the jury room. That's
6 something the Judge will decide, not me. But you
7 can look at the picture itself and determine
8 whether or not there is blood on the CD case.
9 Again, another example of being disingenuous,
10 another example of trying to fool you.

11 Next time this happened in Mr. Buting's
12 argument yesterday was when he talked about this
13 stain, on the bathroom floor. Mr. Buting
14 actually walked up to this particular exhibit and
15 said, well, it looks like somebody took a Q-tip
16 and put it right into that sample of blood.
17 Which you heard some of the blood from
18 Mr. Avery's bathroom was analyzed, that it was in
19 fact Mr. Avery's blood, there isn't any question
20 about that.

21 But what Mr. Buting didn't tell you,
22 and what you heard testimony of, is when this
23 blood sample was collected. Do you remember? Do
24 you remember when this blood sample was
25 collected? Remember Detective Remiker and

1 Mr. Tyson, on the first night, talking about
2 going through the entire trailer and collecting
3 all the blood, and that they finished sometime
4 after 10:00 p.m., as it was approaching
5 11:00 p.m., it was pouring rain outside. You all
6 remember that, you remember that from the 5th of
7 November.

8 Mr. Buting is trying to sell you, he is
9 trying to fool you into thinking that maybe this
10 is the source of the blood in the SUV. Folks,
11 the SUV was already in an enclosed and locked
12 trailer, on its way to Madison, with Crime Lab
13 personnel and law enforcement personnel all
14 surrounding it.

15 To suggest to you that this might be the
16 source of any of all of that blood that you saw
17 in the SUV is, again, disingenuous. It's trying
18 to fool you. And it's my job, as the prosecutor,
19 to point those things out to you. It's my job to
20 show you just how absurd and ridiculous some of
21 those arguments are.

22 Mr. Buting then talked about the bullet,
23 and about the DNA, and suggested that, well, they
24 are both in the same room with Sherry Culhane, Ms
25 Culhane, the analyst in this particular case.

1 What Mr. Buting doesn't tell you, though, doesn't
2 remind you, though, when Mr. Gahn made this point
3 very clear, because of what's called the
4 contamination issue with the bullet in this case,
5 is that the extract for a sample of evidence is
6 done separately, and at a separate time than the
7 extract or the control is done.

8 Remember Ms Culhane telling you that the
9 samples are locked away in a cabinet. She was
10 talking about her bench, and how it's cleaned
11 off, and those kind of things. And I don't know
12 if Mr. Buting, I suspect he wants you to believe,
13 if you remember collectively, if you remember
14 about Ms Culhane, if he's suggesting that the Pap
15 smear, or the DNA from Teresa Halbach, somehow
16 got out of the sealed envelope that it was in,
17 the standard, somehow maybe walked across her
18 desk, somehow it jumped into the vial, or onto
19 the bullet. And that's the kind of thing that
20 Mr. Buting wants you to believe. That's
21 disingenuous, doesn't happen that way.

22 Mr. Gahn knew that was an important
23 point and he took time, meticulous time with Ms
24 Culhane, to explain that process for you. It's
25 Teresa Halbach's DNA on that bullet because,

1 unfortunately, it went through her body. Not
2 because the DNA from her Pap smear or from other
3 standard that was within the Crime Lab somehow
4 transmitted itself or made its way onto that
5 bullet.

6 There are areas of agreement and this
7 is, I guess, a positive part of the trial. There
8 are some areas of agreement between expert
9 witnesses in this case. Ms Arvizu, and I'm so
10 happy that Mr. Strang cleared that up, it's not
11 Dr. Arvizu. Mr. Strang called it a mistake that
12 Mr. Buting made, calling her, or raising her to
13 the level of doctor. She doesn't have her Ph.D.,
14 like Dr. LeBeau does, the Ph.D., the head of the
15 toxicology unit at the FBI lab.

16 But Ms Arvizu, even the defense expert
17 conceded on cross-examination, from Mr. Gahn, a
18 couple of things. Number one, that a qualitative
19 procedure is a solid scientific procedure. Don't
20 have to do quantitative. In fact, in this case,
21 when there's nothing there; in other words, when
22 three of the samples don't have any EDTA, you
23 can't quantitate it. How do you quantitate
24 nothing? All right. You can't do that.

25 And so for your purposes, when these

1 tests had to be done at the last minute, you
2 heard why, you heard why we didn't get these to
3 the FBI until the last minute. You heard from
4 Mr. Wiegert, that Mr. Wiegert and the State
5 didn't even know about this vial of blood until
6 sometime in December. And you heard that on
7 February 5th, the 5th of February, when you were
8 being selected is when this was sent out to the
9 FBI.

10 Back to Ms Arvizu, though, she
11 recognized that the protocol that was developed
12 was a good protocol, that it was based upon
13 scientific articles, that Dr. LeBeau had made,
14 what she called, significant improvements to any
15 prior protocols that the FBI had done, based upon
16 those articles, and was no question at all that
17 Dr. LeBeau was able to find several things.

18 First of all, that there was EDTA in the
19 vial of blood. Number two, that there was no
20 detectable EDTA on the three blood samples. Now
21 what Ms Arvizu did have some concern was about is
22 that this expert only tested three of the
23 samples. All right. Three of the swabs that --
24 that we're talking about. And I think -- I don't
25 think that's the next slide, it is not. I will

1 show those in just a minute, when we get to the
2 EDTA part of this case. But there wasn't any
3 question that EDTA was present in the vial and no
4 EDTA was detectable on the samples.

5 We also heard agreement between
6 Dr. Fairgrieve and Dr. Eisenberg. The agreement
7 that we have heard. In fact, we liked
8 Dr. Fairgrieve very much, from Canada, and
9 although he is not board certified, you should
10 not hold that against him. Dr. Eisenberg is, and
11 that is only a handful of anthropologists that
12 reach that level. But we actually thought
13 Dr. Fairgrieve was a very, very nice man and a
14 very good expert.

15 And he testifies mostly for -- in
16 Canada, for -- for the prosecution. And I
17 suspect that's why he conceded several things
18 about his colleague, Dr. Eisenberg. First of
19 all, that the gunshot wounds were present. That
20 there were gunshot wounds that were found in this
21 case, two of them, one in the left parietal, one
22 in the occipital region.

23 He called them peri-mortem, meaning that
24 they were about or around the time of death. He
25 agreed that there was only one person, the bones

1 of one person that we're talking about, which
2 makes sense, and that the gunshot wounds were
3 inflicted in this case before this burning
4 process. All right. So Dr. Fairgrieve and
5 Dr. Eisenberg had many -- and other than the
6 primary burn site, which Dr. Eisenberg rendered
7 an opinion about, and Dr. Fairgrieve was
8 unwilling to do that -- most other areas were, in
9 fact, something that -- that they had agreed
10 upon.

11 Judge, should we take just a couple
12 minutes for a stretch break?

13 THE COURT: Very well, we can do that.

14 ATTORNEY KRATZ: I know it's been about 45,
15 50 minutes. Let's do that and then I will conclude
16 my remarks.

17 THE COURT: Let's take five minutes, at the
18 request of one of the jurors.

19 ATTORNEY KRATZ: We'll do that judge.

20 (Recess taken.)

21 (Jury present.)

22 THE COURT: Mr. Kratz, you may continue.

23 ATTORNEY KRATZ: I appreciate it, Judge,
24 thank you.

25 Defense argued that there was no blood

1 found in the trailer. Since Teresa wasn't killed
2 in the trailer, there shouldn't be. But what was
3 found in the trailer is extremely important.
4 Remember the testimony early on in this case,
5 that on the 5th, on the very first search of
6 Mr. Avery's trailer, they found the very same
7 Auto Trader Magazine, the very same type of bill
8 of sale that we put in this exhibit, that's from
9 Mrs. Zipperer, the very same Auto Trader
10 Magazine, very same bill of sale. Teresa was in
11 that trailer. She was in the trailer, but she
12 was not killed in that trailer.

13 Defense has a hard decision to make
14 regarding Ms Culhane, is she competent, or is she
15 incompetent. And you guys already know why that
16 question has arisen and why it is such a pointed
17 question. Because if she's talented enough with
18 one hair, with one piece of evidence, to
19 exonerate Mr. Avery, why isn't she talented
20 enough with 180 items of physical evidence to
21 contribute to his conviction.

22 So it's a hard argument to make that in
23 one case, and in one circumstance, a couple years
24 ago, she was very talented, she knew exactly what
25 she was doing, but all of a sudden, she's

1 bumbling, some mill worker, some person on a line
2 type person, who really doesn't have any
3 expertise. Well, you don't get it both ways.
4 She's either talented, she either knows what
5 she's doing, as the head of the DNA Unit at the
6 Madison Crime Lab, or she's incompetent.

7 You already know the State's opinion
8 regarding Ms Culhane. We have heard a lot about
9 the Crime Lab Contamination Logs, 89 out of the
10 50,000 or so cases. I will let you guys do the
11 math, as far as what the rate of error, or the
12 contamination rate is.

13 Mr. Buting mentioned yesterday that
14 perhaps the hood latch, perhaps the DNA that is
15 found here was caused by that of Mr. Stahlke,
16 because Mr. Stahlke reached up under and opened
17 up and found that the battery cable was
18 disconnected. Well, so what. Mr. Stahlke talked
19 about he was rummaging around, he was actually
20 touching all kinds of DNA and touching all kinds
21 of blood, or any of those kind of things?
22 Absolutely not.

23 These are professionals. These are
24 people that process evidence for a living.
25 Mr. Stahlke had gloves on when he opened -- latex

1 gloves when he opened this particular vehicle.
2 So it is not Mr. Stahlke's, it was Mr. Avery's
3 DNA that is on the hood latch.

4 Now, the defense also asked why would
5 Mr. Avery disconnect the battery. You heard them
6 asking for speculation, guessing why Mr. Avery
7 would disconnect a battery. I have got an answer
8 and I'm going to tell you right now, right now,
9 that this is speculation. This is guessing. All
10 right. This isn't evidence. It's not even close
11 to it. It's kind of what the defense has been
12 doing through at least their closing arguments.

13 But I am going to speculate and I'm
14 going to guess that a man who hid the SUV and
15 knew that people were going to come looking for
16 that SUV, thought a little bit ahead, not just to
17 crush the car, and taking -- or in unhooking the
18 battery. But when citizen searchers looked at
19 40 acres of cars, and they looked and they go,
20 oh, my goodness gracious, how am I going to find
21 that. Mr. Avery may have thought about those
22 little devices that most of us have on our newer
23 cars. Where we're able to press a button and our
24 lights go on, or an alarm goes on, or something
25 flashes, where you can find your car in a parking

1 lot, if you are like me sometimes and I forget
2 where I have parked my car.

3 Is that why Mr. Avery unhooked the
4 battery, so that the citizen searchers that he
5 knew were coming couldn't just press a button and
6 of the 40,000 (sic) cars, could walk right to
7 that. That's possible. All right. That's an
8 inference, a logical inference, that could be
9 drawn. But that's speculating, and that's not
10 what I'm going to do. That's not what I'm asking
11 you to do. I'm not asking you at all in this
12 case to speculate. I'm simply answering
13 Mr. Buting's question.

14 Where was Teresa killed. This is a easy
15 answer, or at least it is an answer that is
16 directed by all of the physical evidence in this
17 case. Teresa Halbach, as we know, came to the
18 trailer of Steven Avery. We know that they
19 completed their transaction. How do we know
20 that, because the book and the bill of sale was
21 given to Mr. Avery. That's something that, as
22 you heard, happens at the end of the transaction.
23 That's sitting on Mr. Avery's computer desk.

24 We know sometime later, that is, we know
25 sometime in the future, a bullet is found in this

1 exact area, has Teresa Halbach's DNA on it. All
2 right. The inference, and this is an inference
3 that I'm asking you to draw, is that Teresa
4 Halbach was killed in the garage. She was killed
5 in Steven Avery's garage.

6 Now, we have heard testimony about
7 luminal finding blood, that is a reagent, a
8 chemical that is used by the Crime Lab is spread
9 out. There's two things that are most reactive
10 with luminal, one is human blood and the other is
11 bleach. Bleach coincidentally is the one thing
12 that eats up or destroys DNA.

13 We have heard about just to the left and
14 just to the back of this tractor, about a three
15 to 4 foot area, large area that lit up or glowed
16 very brightly. Mr. Ertl testified about that.
17 He was the person who processed that area. I'm
18 asking you to infer that Mr. Avery cleaned up
19 this area with bleach.

20 Now, you knew that inference, or that
21 suggestion from the State, I think, was coming.
22 We have put in the bleach. We have talked about
23 the luminal. We have gotten expert testimony
24 from Mr. Ertl that the two things that light up,
25 it wasn't blood, but it was, in fact, bleach.

1 You heard from Blaine Dassey,
2 importantly, that the garage, other than the junk
3 on the surrounding edges of this garage, looked
4 pretty much like this, from the sense of the
5 Suzuki and the snowmobile, which were in there
6 later on that week, were on the side of the
7 garage at the time. So Teresa Halbach's vehicle
8 is backed in, backed into the garage.

9 Teresa Halbach is killed. She's laying
10 down. She's shot twice, once in the left side of
11 her head, once in the back of her head, or I
12 guess I should more accurately say she's shot at
13 least twice. Because two bullet's were found,
14 two entrance wounds were found to her head. We
15 do have the 11 shell casings on the 6th that were
16 recovered. How many times Mr. Avery actually
17 shot this poor girl, you probably aren't going to
18 be able to determine, but it's at least twice,
19 and it's at least twice to the head.

20 What does he do though, later, with
21 Teresa Halbach. It's the State's theory in this
22 case, and we're entitled to a theory, just like
23 the defense, that after backing in the SUV, into
24 the garage, which was, again, empty at the time,
25 after closing the garage door, which Mr. Fabian

1 testified is how he saw it at around dusk,
2 Mr. Avery does a couple of things.

3 Remember he doesn't know if the cops or
4 somebody is coming looking for Teresa. He has
5 got lots to do. He has got lots of things in the
6 next several hours to do in this case. He has to
7 get rid of all of Teresa's stuff, her camera, her
8 cell phone, her PDA, which very well may be in a
9 purse or something, in the vehicle, which he
10 burns. We know that those are in the burn
11 barrel. We're going to talk about that in just a
12 minute.

13 And he places Teresa Halbach in the
14 back, or the cargo area of her own SUV. Now, in
15 doing that, Mr. Avery does a couple of things.
16 He doesn't do it very gently, because we know
17 that there's motion involved. He throws, if you
18 will, Teresa, in the back, because of the blood
19 spatter across the back of the open gate. But
20 Teresa is laying at rest; she is resting at
21 peace, having been killed by Mr. Avery, kind of
22 diagonally in the back of that SUV.

23 And because of her hair imprint, you are
24 able to deduce that. You are able to know that.
25 Again, remember my closing argument, those are

1 more indications of Teresa telling you this is
2 where I was. All right. This is where he put
3 me. And those are inferences, again, that you
4 should and can adopt. Why, because it's not dark
5 yet, and he needs a big rip roaring fire before
6 he can dispose of and mutilate this body.

7 Again, he has got to do all of this
8 stuff quickly, because he doesn't know if the
9 police are coming. So we hear then, at at least
10 7:30, perhaps before then, but at 7:30 there's
11 already a fire, a big fire in the back. Although
12 it's dark out, there's a big fire in the back of
13 his garage. And we'll talk about some of the
14 more details there. But as long as Mr. Buting
15 asked about the theory of prosecution, again,
16 which we are entitled, that is, in fact, the
17 theory of the State's prosecution.

18 Mr. Buting then asked, why would you
19 build a fire when you have a smelter. The
20 smelter, as we know, or at least this is from the
21 top of the smelter, which kind of melts aluminum
22 as I understand it, is, if you heard the
23 testimony, or if you saw the business buildings,
24 the out buildings, much closer to the residences
25 of the parents, of Delores and Allen. Much

1 closer to the residence of Charles Avery, the
2 brother. Early on in this case we identified
3 what all those buildings were and what were in
4 all of those separate buildings.

5 But what Mr. Avery had to do required
6 some alone time. Mr. Avery needed some privacy.
7 And so Mr. Avery chose his burn area. He chose
8 the place where somebody wouldn't happen upon
9 him, or ask him what he was doing. He was
10 building a fire like he had done many times
11 before.

12 It's an area over which he had control.
13 No other family members would be. And,
14 importantly, Mr. Pevytoe, the arson investigator,
15 remember he went through the smelter, eliminates
16 the smelter as a possible burn location for the
17 body.

18 Mr. Buting asked yesterday did we
19 confuse Lisa Buchner in the case. When she
20 originally testified, Mr. Strang, I believe,
21 questioned her. Mr. Strang provided the answer.
22 Again, this takes a good memory. This takes a
23 lot of you to remember Lisa Buchner's question
24 and answer. But the question was that -- I'm
25 paraphrasing but -- directing your attention to

1 the 31st of October, what did you see? Well,
2 what that does, when you ask a question like
3 that, as a skilled lawyer, and Mr. Strang
4 certainly is a skilled lawyer, Mr. Strang can
5 then come up here and can say, well, she said it
6 was the 31st of October.

7 But she didn't, did she. She never said
8 that it was the 31st of October. When
9 questioned, very courteously by Mr. Gahn, again,
10 about what date really was it, she said, I don't
11 know. When Mr. Gahn asked her, where was the
12 location, that she was clear about. Wasn't down
13 by Mr. Avery's trailer at all. It was one of
14 these cars that's parked at the corner that are
15 for sale.

16 Well, importantly, that excludes,
17 excludes, Teresa Halbach as the person taking
18 this picture. Not only is the time wrong,
19 because we have Bobby Dassey who doesn't have any
20 questions about what this person looks like, or
21 the time this happened, or that it was before he
22 went deer hunting and knew and was able to
23 recognize that that was Teresa Halbach.

24 But we have the defense own witness
25 saying, I don't know. I don't know the date that

1 this happened. Could have been the 1st, could
2 have been the 2nd. Mr. Gahn said, could it have
3 been a week ago, yeah, a week before. Could it
4 have been two weeks before, yeah, it could have
5 been two weeks before.

6 What does that do, how does that help?
7 As Mr. Strang argued in his closing, do you
8 believe that that's the truth, or do you believe
9 that that's disingenuous, again? Is that a
10 misrepresentation of what Ms Buchner actually
11 said? In other words, how does it help? How
12 does it help you? Between Bobby Dassey and Lisa
13 Buchner, who has the better memory? Who was in a
14 position to see what was going on that day? And
15 those kinds of questions you are going to need to
16 answer.

17 Same kind of thing with the other lay
18 witness that was called in this case, some
19 gentleman who was a propane employee, as I
20 understand, who talked about seeing a green
21 mid-sized SUV. Well, ask yourselves, is that a
22 green, mid-sized SUV? I will argue, no, that
23 that's not a green mid-size SUV.

24 But there's interpretations and there
25 are things that may or may not be important about

1 that. However, it hardly helps the equation. It
2 hardly helps you decide in this case whether or
3 not that was Ms Halbach. In fact, we know it
4 wasn't, because Ms Halbach never did leave that
5 property.

6 All right. You need to buckle up here.
7 Because here's where the absurdity starts.
8 Mr. Buting wants you to believe that some unknown
9 person, somebody that Mr. Buting can't identify,
10 somebody that the defense cannot identify,
11 actually undetected, took one of the four burn
12 barrels belonging to Barb Janda.

13 Suggested that that theory also
14 includes -- By the way, that would take more than
15 one person if you think about it, 55 gallon drum,
16 carrying this, we're talking about more than one
17 person. But we're going to go just for now with
18 Mr. Buting's theory in this case, and that at
19 some remote location, Teresa's burned, that the
20 bones are dumped, and that the burn barrel is put
21 back.

22 Mr. Buting doesn't tell you, though, are
23 the eight or nine steps in between that you as a
24 jury have to find as facts, in order to kind of
25 buy this. Okay. When somebody is trying to sell

1 you something, and when you decide whether or not
2 you are going to buy that, you should understand
3 all of the steps that you have to buy.

4 You have to buy that they could first of
5 all take one of these barrels undetected. All
6 right. Next, that they have Teresa Halbach lying
7 dead somewhere. Whoever this is, has Teresa
8 already lying dead in some remote location. And
9 rather, rather than dispose of Teresa Halbach, if
10 they were inclined to do so, at that remote
11 location, Mr. Buting is asking you to believe
12 that she's burned, that her body is mutilated,
13 that her body is then loaded, apparently, into
14 this 55 gallon drum of Barb Janda, that has been
15 stolen, it's a theft, that's been somehow
16 secreted off of the property.

17 What you are then being asked to believe
18 is that they loaded back on whatever vehicle it
19 is that they are able to transport Ms Halbach,
20 after, remember, the at least hour and a half to
21 2 and a half hours at 1600 degrees that it takes
22 to fully cremate a body, that they load all of
23 these remains. And rather than dumping them
24 someplace else, they bring them back to the very
25 place that Steven Avery, on the day that Teresa

1 Halbach was killed, had a big fire.

2 And they decide to dump the bones. Now,
3 they don't decide to dump all the bones,
4 Mr. Buting's theory goes. They only dump the
5 bones, some of them, and they leave some of them.
6 But interestingly, the ones they dump are the
7 little ones, and the ones they leave in the
8 barrel are the big ones.

9 Undetected. But they are able to do
10 this, undetected, just a couple of feet from
11 Mr. Avery's trailer. Then Mr. Buting wants you
12 to believe that they are able to put back the
13 barrel that has been taken off of the property,
14 again, undetected, and leave.

15 Now, Mr. Buting called that a plausible
16 explanation, one theory as to how these bones can
17 be in two different places. I hope you agree
18 with me as to the plausibility of that defense
19 theory.

20 Coupled with that theory, what you have
21 to buy into, what you have to believe, is that
22 there is somebody else out there, that there is
23 somebody, not a police officer. All right. So
24 that narrows the scope of people that are able to
25 do this. Somebody who's not a police officer,

1 who skillfully exploited the law enforcement
2 bias. That the real killer knew about,
3 apparently, the lawsuit, or the animosity, or the
4 embarrassment, or something about the 1985 case
5 enough, where it was important enough to them to
6 kill some innocent 25 year old victim and plant
7 it on Mr. Avery's property.

8 That's absurd. If this wasn't such a
9 important decision that you had to make, it would
10 be laughable. It would be something that if
11 somebody told you at a party, or somebody told
12 you at your home, you would say nobody would
13 believe that. And nobody should. Nobody should
14 believe this series of situations or coincidences
15 that would necessarily lead you to find Mr. Avery
16 not guilty.

17 The SUV was planted in this case, or at
18 least the defense will have you believe that the
19 SUV was planted, that somebody planted the SUV.
20 The fact of the matter is that this SUV was
21 concealed. It was obscured. Somebody didn't
22 want it to be found. Let me say that again.
23 What you are looking at right here, how the SUV
24 was found by Ms Sturm, was by somebody who didn't
25 want this SUV to be found. All right. That

1 makes sense.

2 Well, if you are going to plant
3 evidence, you have to want it to be found.
4 Because if Mr. Avery is going to be accused of
5 some murder that he didn't do in this case, you
6 would expect to find this vehicle, if it was
7 planted, in the Avery parking lot, or by
8 Mr. Avery's trailer, or in some location where it
9 would be found.

10 Again, it was only through happenstance
11 and by very fortuitous intervention that vehicle
12 was ever found. Very important, collectively
13 again, and using your common sense to understand
14 that concept, that this vehicle was obscured in
15 such a way that whoever put it there, like this,
16 didn't want it to be found.

17 Defense wants you to ignore this, and
18 for good reason. The defense wants you to ignore
19 the electronics that were found in the burn
20 barrel. Why, because there's no explanation for
21 it. Because it doesn't fit in any, in any theory
22 that the defense has advanced in this case. All
23 right. No law enforcement planting theory, no
24 civilian planting theory, no individual who
25 skillfully exploited the law enforcement bias

1 theory, explains why these things are burned in
2 Mr. Avery's burn barrel.

3 And so apparently the defense wants you
4 to ignore that. Well, remember the instruction,
5 and reasonable doubt is not -- is a doubt based
6 upon reason and common sense, but in
7 consideration of the evidence, which means all of
8 the evidence in this case, not just some of it.

9 So my point, ladies and gentlemen, is if
10 you are going to buy into one of these theories,
11 you have got to ask yourself, collectively, what
12 the heck is this. Her phone, her PDA, her
13 camera, are all found about 20 feet from
14 Mr. Avery's door, and he is found, that day,
15 burning in that particular barrel. If Mr. Avery
16 is not involved in the death and mutilation of
17 Teresa Halbach, then why are these things in that
18 barrel.

19 Also, you can't ignore the fact, please,
20 collectively remember, that after 2:41 p.m.,
21 after 2:41 p.m. on the 31st, Teresa Halbach's
22 phone is never used again. Never used again.
23 Her phone is in that burn barrel. Her phone is
24 being burned. And you, as the jury, have to
25 decide why. There's a couple of explanations,

1 one is that the defendant killed her and burned
2 it, and the other one, I guess, the defense wants
3 you to just come up with on your own.

4 That brings me to the conclusion, or the
5 last question, and that's, did the cops kill
6 Teresa Halbach. Again, the defense says no. But
7 if the cops had her blood, if the cops had her
8 bones, and before the 5th, if the cops knew she
9 was dead, let me say that again, if before the
10 5th the cops knew that Teresa Halbach was dead,
11 they were either told that by the real killer, or
12 they killed Teresa Halbach.

13 You have got to be willing to accept one
14 of those scenarios. And I don't think you can.
15 And I don't think you should. And I don't think
16 that the evidence points to that at all.

17 Mr. Strang, in his opening statement,
18 promised you what the defense was going to be.
19 Mr. Strang told you that it's no surprise that
20 the blood from an unsecured vial in the box in
21 the Clerk's Office, that Lieutenant Lenk examined
22 in 2002, ends up in the Toyota. At the start of
23 the case, that was what the defense was. That's
24 what the defense theory was. That's what the
25 defense said their theory of defense and what the

1 evidence was going to show in this case.

2 Vial planting, though, causes some
3 risks, risks to, what I'm characterizing as risks
4 to the defense. Because when you announce that
5 defense, the State gets to meet that defense. We
6 get an opportunity to tell you, the jury, through
7 witnesses, whether or not that's plausible,
8 whether or not that could happen, or whether or
9 not that's implausible.

10 And there's two ways to do that. First,
11 is the common sense way to do that. The vial
12 planting defense for Mr. Avery, and for the
13 defense team, is that either Mr. Lenk or
14 Mr. Colborn got through this door. All right.
15 They got through a door that they didn't have a
16 key to, and they got through a door that they
17 didn't have the code to. That's the first part
18 of this.

19 The next thing that they are asking you
20 to buy is that they knew that there was a file
21 someplace in the Clerk of Court's Office,
22 sometime between the 3rd and the 5th of November.
23 Now, why do I say the 3rd and the 5th, because
24 the 3rd is when Teresa is reported missing,
25 doesn't pay to plant evidence and to steal a vial

1 of blood before we know that it's going to do any
2 good. And the 5th is when Pam Sturm finds her.
3 So between the 3rd and the 5th they have to know
4 that this box actually exists.

5 They also need you to buy that they know
6 that there is a box within the box. That there
7 is a vial of blood inside of that particular box
8 in the Clerk's Office. They need you to
9 believe -- They need you to believe that they get
10 through a door they have no key, that they have
11 no code, they find a box that they don't know the
12 existence of, they find the vial that they don't
13 know the existence of, and then they are able to
14 get their hands on that vial of blood.

15 They also need you to believe that
16 nobody sees them do this, that they are able to
17 do that undetected, to secret it, again, to
18 remove it from the Clerk of Court's Office in
19 Manitowoc, to plant the blood, assuming they know
20 how to do that, in six different places.

21 I'm stopping right here, because I need
22 to. Because for the defense version to hold any
23 water at all, the van -- excuse me -- the SUV
24 can't be found yet. They have to plant the blood
25 before it's found. Again, there's only two ways

1 that they can do that. Either they kill this 25
2 year old girl, or they found her murdered
3 somewhere else.

4 And if they found her murdered somewhere
5 else, then weren't they taking quite a chance,
6 weren't Mr. Lenk and Colborn, if you admit or buy
7 what it is that these two gentlemen are selling,
8 wouldn't you have to agree that they took a
9 chance that this very 25 year old photographer
10 was also last seen alive by that man.

11 My God, they got lucky, didn't they. To
12 go and find the vial of blood, even assuming they
13 knew where it was, that the dead woman that they
14 had in their possession, theoretically, was also
15 the last person to have seen Mr. Avery. It
16 doesn't make sense. All right.

17 That's the common sense way to deal with
18 the vial of blood planting. By the way, because
19 the vial of blood is still in the Clerk's Office,
20 you have to reverse this process. You have got
21 to get the blood back after we do the planting.
22 We have to get through, again, the door that we
23 have no key to, and we have no code to, and into
24 the box, and get this thing secreted back in
25 there, undetected, with nobody seeing.

1 That's not reasonable. That's not a
2 reasonable doubt. Reasonable doubts are for
3 innocent people. Reasonable doubts are things
4 that juries adopt when all the evidence points to
5 that. And this planting, this vial planting
6 defense, even from a common sense standpoint, is
7 absolutely ludicrous.

8 But what we were able to do, what you
9 heard, is scientifically exclude that vial of
10 blood. You heard from Dr. LeBeau, who testified
11 that this blood is loaded with EDTA and this
12 blood, and this blood, and this blood, have no
13 detectable levels of EDTA. And so instead of
14 calling all of the people with keys and with
15 codes, and people in the Clerk's Office, and who
16 might have seen Lieutenant Lenk or Colborn, or
17 all those kinds of things, instead of doing it
18 that way, we only had to call one witness, who
19 scientifically could tell you that there is
20 absolutely no way that that vial of blood was
21 used to plant.

22 In fact, that very question was asked of
23 Dr. LeBeau, the head of the toxicology section,
24 or the unit at the FBI. And he said, by a
25 reasonable degree of scientific certainty, this

1 vial of blood is excluded, that means it's not
2 it, it's excluded as the source of those three
3 bloodstains.

4 Now, why is that important. Lieutenant
5 Lenk and Sergeant Colborn, as I mentioned
6 earlier, are good, decent, honest cops, sworn to
7 uphold the law. Kinds of officers Manitowoc
8 citizens should be proud to have on your police
9 force. They are the kinds of guys that you want
10 investigating cases for you, for Manitowoc
11 County. And again, they are not just some cops,
12 they are your cops, that's why a Manitowoc jury
13 decides this case.

14 This isn't just two guys, it's Jim Lenk
15 and it's Andy Colborn. And when you accuse
16 police officers of official misconduct, that's
17 serious business. Mr. Strang correctly predicted
18 that there would be some anger about this issue,
19 coming from the prosecution side, and there is.

20 Let me tell you why. Their livelihood,
21 their reputations, their families, everything in
22 their 20 plus years of law enforcement are on the
23 line, when some lawyer accuses them of
24 misconduct. Not just any misconduct, but
25 planting evidence in a murder case. All right.

1 Serious, serious business.

2 And as a representative of the State, as
3 the prosecutor in this case, I'm here to tell you
4 folks, that if you are going to allege that some
5 Manitowoc cop is crooked, that some Manitowoc cop
6 committed a crime, you better have something to
7 back it up. And when you don't, and when there
8 is a witness from the FBI who says that didn't
9 happen, and when common sense said, that didn't
10 happen, these men are owed an apology. Their
11 good name, their reputations, need to be restored
12 to them.

13 And Mr. Strang talked about what a
14 guilty verdict, or a not guilty verdict, may do
15 in this case. A guilty verdict is most
16 importantly attributed to whether or not
17 Mr. Avery committed these horrific acts in these
18 cases. But also the issue of official or police
19 misconduct should be something that angers you,
20 just as it angers me.

21 Mr. Buting said that he might have been
22 a little rough on Ms Culhane, that he owed her an
23 apology. I'm hoping that the comments that have
24 been directed towards Jim Lenk and towards Andy
25 Colborn, at the conclusion of this case, are also

1 met with an apology.

2 But what I heard yesterday, what I heard
3 yesterday, from Mr. Buting, when he suggested
4 that perhaps it was Teresa's lifestyle that
5 contributed to her homicide, I'm paraphrasing,
6 but he said, because she was at some party, what
7 do we know about this party that she was at on
8 Saturday, or what do we know about some phone
9 calls that she had gotten, or what do we know
10 about her living arrangements.

11 Do you blame a 25 year old homicide
12 victim? And when you suggest that that victim
13 had some responsibility, or something to do with
14 her own demise, you need to be held accountable
15 for that. You need to be taken to task for that.
16 And, again, as the prosecutor, I'm expressing my
17 indignance about that.

18 Any suggestion that these good people of
19 the Halbach family have to endure in listening to
20 Mr. Buting stand before you and say, what about
21 this woman's lifestyle, or what about this party,
22 or what about who she's living with, is
23 absolutely out of bounds, absolutely improper,
24 has no place in this case.

25 What does have a place in this case is

1 the facts. And now I have come full circle. And
2 at the conclusion of this, my final argument
3 before you, the jurors, you have seen, and should
4 see by now, the stark difference between the
5 State's facts, between our reliance on the facts,
6 and the defense necessarily relying upon
7 speculation.

8 Physical evidence, the DNA evidence, the
9 eyewitness testimony, the scientific evidence,
10 the big fire that Mr. Avery had, common sense all
11 point to one person and there's a reason for
12 that. As the jury in this case, you have a duty.
13 You have a duty to return what's called a true
14 verdict. You have a duty to search for the
15 truth.

16 I agree with Mr. Strang that you do have
17 a duty in this case, but I disagree when Mr.
18 Strang tells you that your finding of guilt in
19 this case is not going to solve the crime. It
20 is. It's going to solve the crime.

21 And I'm here to tell you, also, as the
22 prosecutor, and collectively, the three of us
23 prosecutors, with lots and lots of years of
24 experience, are also going to tell you that it
25 will provide closure. It will provide closure

1 for the Halbach family, at least in the legal
2 sense. And it's in the sense for what you are
3 charged to do, and that is to assign
4 responsibility. It's to assign accountability
5 for the death of Teresa Halbach.

6 I don't believe it is a difficult
7 decision. It's a complex series of facts. And
8 it is a very, very serious case. But it's not a
9 difficult case. It's not a difficult decision
10 that you have to make, because everything in this
11 case pointed towards one person, towards one
12 defendant.

13 I'm thanking you, at the conclusion of
14 this case, on behalf of the State of Wisconsin.
15 And urging you, urging you, to follow the Court's
16 instructions, to follow the evidence in the case,
17 and return verdicts of guilty. Thank you. Thank
18 you, Judge.

19 THE COURT: Now, members of the jury, the
20 duties of counsel and the Court have been performed.
21 The case has been argued by counsel. The Court has
22 instructed you regarding the rules of law which
23 should govern you in your deliberations. The time
24 has now come when the great burden of reaching a
25 just, fair, and conscientious decision of this case

1 is to be thrown wholly upon you, the jurors selected
2 for this important duty.

3 You will not be swayed by sympathy,
4 prejudice, or passion. You will be very careful
5 and deliberate in weighing the evidence. I
6 charge you to keep your duty steadfastly in mind
7 and, as upright citizens, to render a just and
8 true verdict, or in this case, just and true
9 verdicts.

10 The following six forms of verdict will
11 be submitted to you concerning the charges
12 against the defendant, Steven A. Avery.

13 One reading: We, the jury, find the
14 defendant, Steven A. Avery, guilty of first
15 degree intentional homicide, as charged in the
16 first count of the Information.

17 A second reading: We, the jury, find
18 the defendant, Steven A. Avery, not guilty of
19 first degree intentional homicide, as charged in
20 the first count of the Information.

21 A third reading: We, the jury, find the
22 defendant, Steven A. Avery, guilty of mutilating
23 a corpse, as charged in the second count of the
24 Information.

25 And a fourth reading: We, the jury,

1 find the defendant, Steven A. Avery, not guilty
2 of mutilating a corpse, as charged in the second
3 count of the Information.

4 A fifth reading: We, the jury, find the
5 defendant, Steven A. Avery, guilty of possession
6 of a firearm, as charged in the third count of
7 the Information.

8 And a sixth reading: We, the jury, find
9 the defendant, Steven A. Avery, not guilty of
10 possession of a firearm, as charged in the third
11 count of the information.

12 It is for you to determine whether the
13 defendant is guilty, or not guilty, of each of
14 the offenses charged. You must make a finding as
15 to each count of the Information.

16 Each count charges a separate crime and
17 you must consider each one separately. Your
18 verdict for the crime charged in one count must
19 not affect your verdict on any other count.

20 This is a criminal, not a civil case,
21 therefore, before the jury may return a verdict
22 which may legally be received, the verdict must
23 be reached unanimously. In a criminal case, all
24 12 jurors must agree in order to arrive at a
25 verdict.

1 When you return to the jury room, select
2 one of your members to preside over your
3 deliberations. That person's vote is entitled to
4 no greater weight than the vote of any other
5 juror.

6 When you have agreed upon your verdicts,
7 have them signed and dated by the person you have
8 selected to preside. I ask that you return the
9 unsigned verdict forms as well.

10 At this point, I'm going to ask the
11 media folks to shut the audio down because the
12 Court is going to be identifying one of the
13 jurors by name. I believe somebody is supposed
14 to signal me once that's been done. Thank you.

15 Members of the jury, as I previously
16 indicated, just before the beginning of
17 deliberations, any remaining alternate jurors
18 would be selected. We are now at that point in
19 the trial.

20 The alternate juror will be sequestered
21 separately from the other jurors until
22 deliberations are completed, to be available in
23 the event one of the other 12 jurors becomes
24 unable to complete deliberations.

25 The alternate juror in this case has

1 been determined to be Nancy Stienmetz. Ms
2 Stienmetz, with the consent of counsel for both
3 parties, I will be meeting with you shortly, in
4 chambers, to explain your remaining role in this
5 case.

6 At this time I will ask the Clerk to
7 swear the officer.

8 (Jury bailiff sworn.)

9 THE COURT: The jury is excused. Ms
10 Stienmetz, you'll be waiting in the hallway to meet
11 with me.

12 (Jury not present.)

13 THE COURT: You may be seated. Counsel, if
14 you should leave the courtroom area, I ask you to
15 keep the Clerk's Office informed of your
16 whereabouts.

17 ATTORNEY STRANG: The remaining task to
18 tend to is that we had agreed, I think, that all
19 photographs would go to the jury without a request.
20 But since then, I don't remember if I did this on
21 the record or not, but had moved to exclude some of
22 the exhibits already admitted, and photographs of
23 those.

24 I have numbers of them in my brief case,
25 but they are the handcuffs, leg irons, electrical

1 cords, and as I say, related pictures. So the
2 Court would need to rule on those, because if to
3 be excluded, of course, those photographs ought
4 not go.

5 THE COURT: I recall being informed that I
6 could anticipate the receipt of such a motion; I
7 don't know that I have received it yet. But I was
8 notified of it and my recollection is that the
9 parties were going to discuss the potentially
10 disputed items of evidence in order to determine
11 whether there would be a stipulation proposed.

12 ATTORNEY STRANG: I don't know that we had
13 much further conversation, so the question may be
14 best put to the State.

15 ATTORNEY KRATZ: If I could just have a
16 moment, Judge, I will be happy to identify those for
17 the Court. Exhibit 173, Exhibit 174.

18 ATTORNEY STRANG: 228 and 229.

19 ATTORNEY KRATZ: Thank you, counsel. 228,
20 and 229, although those are items themselves.

21 ATTORNEY STRANG: Yes, some of these are
22 photographs and some are the items themselves. And
23 I don't have which is which.

24 ATTORNEY KRATZ: All right. 228 -- 229 has
25 already been withdrawn, I think, as an exhibit. 228

1 is the other photo that is at issue in the case.
2 And those three photos, then, that have been
3 identified, we have no objection they be removed
4 from the binder of photos, and that the balance of
5 the photos be tendered to the jury at this time.

6 THE COURT: All right. Can you give me the
7 numbers of the photos again.

8 ATTORNEY STRANG: 173, 174, 228, and
9 Mr. Kratz says that 229 already was withdrawn.

10 ATTORNEY KRATZ: Right. Those are the
11 three exhibits.

12 ATTORNEY STRANG: Then the items themselves
13 are Exhibits 203, 204, and 249. Those are the
14 actual items.

15 ATTORNEY KRATZ: They wouldn't be going
16 back anyway, Judge.

17 THE COURT: Pardon me?

18 ATTORNEY KRATZ: The items wouldn't be
19 going back anyway.

20 THE COURT: I understand the motion to be
21 going beyond that.

22 ATTORNEY STRANG: Right. But they -- I'm
23 asking that they be excluded, that is, that the
24 Court reconsider the ruling admitting them, exclude
25 those things as exhibits. I agree, of course, with

1 Mr. Kratz, that these things wouldn't be going to
2 the jury anyway, absent a request, but I'm looking
3 to have them excluded as evidence altogether.

4 THE COURT: My only hesitation there is,
5 given the stage of the trial at which this is being
6 raised. I take it you are not asking for some type
7 of further instruction to the jury that they have
8 been withdrawn.

9 ATTORNEY STRANG: I'm not, no. I mean, we
10 would have addressed that before closing arguments.

11 THE COURT: Does the State have any
12 objection?

13 ATTORNEY KRATZ: The only issue, Judge, is
14 if they would ask to see those items, I think that
15 could be addressed at that time. I don't believe
16 that the items themselves, that is the physical
17 items themselves, need to be addressed at this time.
18 Certainly an argument could be made as to the
19 relevance, they are part of the record. And up and
20 until the time that those may be asked for, I
21 believe that request by counsel is premature.

22 THE COURT: Let me ask this. Is the
23 defense, with the understanding that both parties
24 agree that these six exhibits that have been
25 identified, that is, three photos and three physical

1 items, with the understanding that they will not be
2 sent to the jury, and I believe there's a
3 stipulation that the three photos can simply be
4 withdrawn, is the defense willing to postpone
5 further consideration of its request to withdraw the
6 other exhibits to such time as the jury requests to
7 see them?

8 ATTORNEY STRANG: Sure, because there is --
9 it's true, there is no practical effect other than
10 cleaning up the record, and that can be done any
11 time.

12 THE COURT: So, based on the stipulation of
13 the parties then, items -- Exhibits 173, 174 and 228
14 that are photos, are withdrawn, and items 203, 204,
15 and 249, will not be sent to the jury room if
16 requested.

17 ATTORNEY STRANG: That's right. Now, I
18 have to say, I had -- our exhibit shows 229.

19 THE COURT: I have been told -- my
20 understanding was that's already been withdrawn.

21 ATTORNEY STRANG: Let's just confirm that
22 with the clerk, I probably am wrong, but 229, Janet.

23 THE CLERK: I didn't show that as
24 withdrawn.

25 ATTORNEY KRATZ: It should be, I have no

1 problem with that.

2 THE COURT: All right. 229, then, is also

3 withdrawn.

4 ATTORNEY STRANG: Very well.

5 ATTORNEY KRATZ: Thank you.

6 THE COURT: Very well, we're in recess.

7 ATTORNEY BUTING: Judge, one other matter.

8 THE COURT: Yes.

9 ATTORNEY BUTING: I don't know what other

10 exhibits you intend to send back to the jury, other

11 than the photographs, but certainly we would object

12 to the expert's reports going back.

13 THE COURT: Let me clarify my understanding

14 further. If I understand what the parties are

15 telling me, and I want to make sure I'm not reading

16 too much in, I'm glad, Mr. Buting, that you brought

17 this up. If the jury requests permission to see any

18 of the other photos, are the parties saying I can

19 send them back, or the parties wish to be heard

20 before they are sent back?

21 ATTORNEY STRANG: Photos can be sent

22 without jury request.

23 ATTORNEY KRATZ: Right now.

24 ATTORNEY STRANG: That's what we agreed.

25 THE COURT: You are asking the Court to

1 send them back.

2 ATTORNEY KRATZ: Right now, yes.

3 THE COURT: Okay.

4 ATTORNEY KRATZ: But any other exhibits, if
5 they ask to be seen, we would all like to be heard
6 on that.

7 ATTORNEY STRANG: And maybe we didn't have
8 an agreement on this, I expressed the view to
9 counsel that we also could send CV's for all experts
10 back, without request. If they are not in
11 agreement --

12 ATTORNEY KRATZ: No, that--

13 THE COURT: I'm a little concerned if we're
14 sending all photos, that's one thing. I hate to
15 send back nothing but all CV's and nothing else, for
16 fear that it might draw undue attention to them. So
17 I'm going to wait, and if the jury requests to see
18 anything other than the remaining photos, I will
19 notify the parties, just as I would if I receive a
20 question from the jury, and the parties will have a
21 chance to be heard before they go back.

22 ATTORNEY KRATZ: That sounds good.

23 THE COURT: Fair enough?

24 ATTORNEY KRATZ: Thank you, Judge.

25 ATTORNEY STRANG: Yes.

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THE COURT: All right. We're adjourned for
this time.

(Court in recess, jury deliberating.)

STATE OF WISCONSIN)
) ss
COUNTY OF MANITOWOC)

I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 22nd day of January, 2008.

Diane Tesheneck, RPR
Diane Tesheneck, RPR
Official Court Reporter